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THE SPEECH OF CICERO
IN DEFENCE OF
CLUENTIUS



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IN DEFENCE OF
CLUENTIUS

TRANSLATED INTO ENGLISII
WITH AN INTRODUCTION AND NOTES

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P R E F A C E

CICERO'S *Speech in Defence of Cluentius* holds the very foremost rank among the extant specimens of the great orator's forensic powers. It is an admirable exhibition of the "grand style" in rhetoric. His case had some very weak points, and there is reason to believe that his statement of it is sometimes intentionally vague and even misleading. But for eloquence of diction, and as a monument of adroit pleading, it is unsurpassed, and probably unsurpassable.

The historian Niebuhr recommended the systematic study of the speech to students who wish to perfect themselves in the art of expression, and to gain a mastery of Ciceronian idiom and vocabulary. This volume has been prepared mainly with the view of helping such students to profit by his weighty recommendation, and in the belief that no single speech is better adapted for the purpose.

The translation which it offers may also interest such "English readers" as may care to make the

acquaintance, under the great orator's guidance, of a distinguished company of criminals. They will find that the narrative which Cicero undertakes to unfold has certainly lost nothing in the telling. The element of human interest is sustained throughout, even in the remote ramifications of a most intricate plot; and, in addition to the outbursts of eloquence that mark the progress of the action, the story is lit up by the vivid dramatic faculty which the orator always had at his command, as well as by touches of humour and pathos, the effect of which need not be wholly lost in an English rendering.

Though what I should now like to consider a first draft of my translation was published some thirteen years ago, the labour spent on the present volume may give it a title to be considered as a substantially new work. The Introduction has been greatly extended, and the commentary will be found to contain some matter that may claim the attention even of advanced scholars. It includes, as formerly, the notes which the late Professor Nettleship kindly placed at my disposal.

In the further study of the *Pro Cœlentio*, I have been greatly helped by the scholarly and elaborate edition published in 1887 by Mr. W. Yorke Fausset, now Headmaster of the Grammar School, Ripon. My notes will show that I have

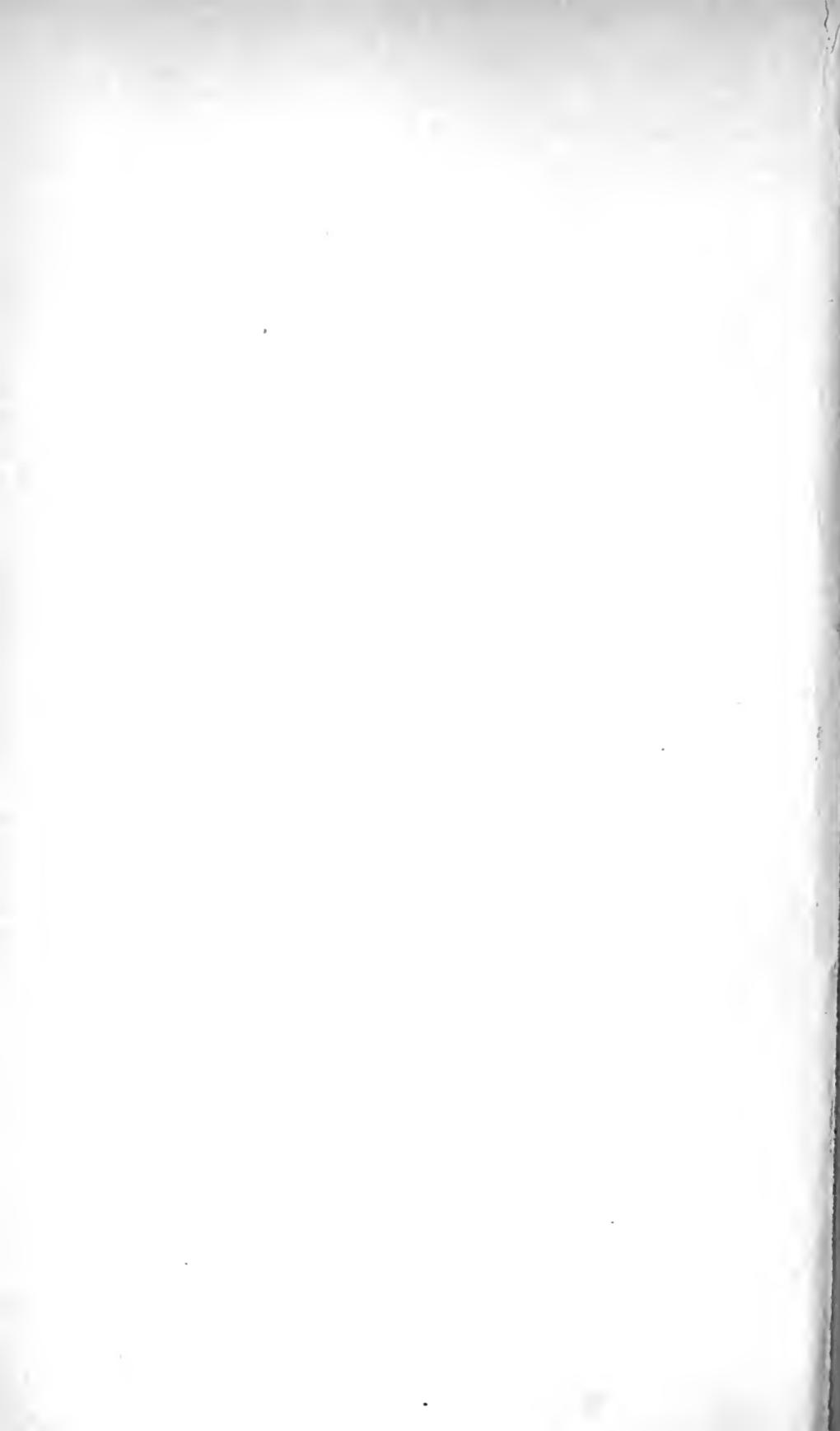
also made use of some instructive reviews of Mr. Fausset's book,—especially those by Dr. J. S. Reid in the *Classical Review*, and Mr. W. T. Lendrum in *Hermathena*.

To Dr. Reid, with whose name every student of Cicero is proud to connect his work, I am further indebted for the ready kindness with which he acceded to the request that he should read the proof of the notes, and give me the benefit of his advice in regard to certain matters of difficulty. The valuable observations which he forwarded to me, as the result of his study of what I had written, have been incorporated with my commentary, and will be found distinguished by Dr. Reid's initials.

I am under an obligation also to Mr. R. K. Hannay, Lecturer in this College, for reading the proof of the translation, and for some valuable suggestions.

W. P.

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INTRODUCTION

I

THE speech for Cluentius is one of the most interesting monuments of Roman oratory. The rhetorical literature of Greece, of which the extant specimens are more diverse, and are not limited to a single name like that of Cicero, contains nothing that gives us a greater revelation of the circumstances of private life, nor anything that admits of more direct comparison with the lines of a modern pleading. The case in connection with which it was delivered was one of the most memorable of ancient *causes célèbres*. The defendant in the action is impeached for poisoning before a Roman jury, at the instance of his own mother; and his advocate meets the issue thus raised in a manner which sometimes reminds us of the eloquence of a Queen's Counsel in a criminal trial at the present day. The judicial oratory both of Athens and of Rome is commonly charged with being often wide of the mark at which it aimed, and with allowing the introduction of arguments which would be inadmissible now that legislation has been more fully systematised, and less opportunity is given the advocate of appealing to considerations of equity and common

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sense on the part of a mixed body of jurors. But the speech before us is much less liable than others to this criticism ; for though the indictment against Cluentius was nominally brought under a definite statute, it depended mainly on extraneous matter and “surrounding circumstances” of great interest not only in themselves, but also by reason of their connection with one of the burning questions of the day—the administration of justice in the public law-courts. The latitude of treatment observable in Cicero’s speech for the accused is therefore not without justification. It would have been no easy matter for an advocate to approach the case that had been stated by the opposite side in the unimpassioned mood which is proper to most judicial pleadings. Here was a mother appearing at the bar of a court of justice to prosecute the son of her bosom on a charge of having first by foul means procured the ruin and conviction of her guiltless husband, and of afterwards taking his life by poison. This in itself might naturally have aroused a strong feeling of prejudice against the defendant ; but there was more than this. The verdict of the jury in the case where Cluentius had prevailed over his step-father had for long been cited as a glaring example of the miscarriage of justice, and the defendant had the disadvantage of that fact also to the full. What then must Cicero’s feelings have been if, as might fairly enough be inferred from the great appearance of candour maintained throughout the speech, he really believed in his client’s innocence ? He seeks to combat the prepossessions of his audience by first painting the characters of both husband and wife in their true colours, and then by showing the groundlessness of the charge of bribery and corruption advanced

against the son ; and after conducting a most complex and intricate case in a manner as remarkable for its eloquence and force as for the careful arrangement of the facts and the ingenuity displayed in the general management of the argument, he finishes by claiming the sympathy of his hearers for a son whose whole life had been one series of persecutions at the hands of a mother whose character and conduct could only excite the most utter horror.

The value of the oration would have been greatly enhanced if the address of the counsel for the prosecution had also been handed down to us ; but, even with our imperfect knowledge of the real nature of the points at issue between the contending parties, we can construct a picture of provincial society in the last days of the Republic for which materials are elsewhere almost entirely wanting. The narrative of Cicero, highly coloured as it evidently is by political and partisan considerations, is far from being the unbiassed record of an impartial historian ; but the main outlines of the drama of real life portrayed by him may be accepted without hesitation, and serve to point the contrast between the old-fashioned virtue of the early Italian yeomen, and that decay of manners which began with Rome's foreign conquests, and finally culminated in the downfall of the empire. Much of the now widespread disorganisation of society may be directly attributed to the evil results of the Social War, and of the civil strife so long waged between Marius and Sulla. Licence and disorder had in most centres supplanted the former taste for agricultural pursuits ; brigandage had increased to a degree previously unknown ; and it was, accordingly, to the still

unsettled population of the provinces that Catiline not long afterwards looked for support in the struggle he attempted to carry on against the constituted authorities of the capital.

The trial at which the speech was delivered was held in the year of Cicero's praetorship, B.C. 66. The defendant, A. Cluentius of Larinum, had been impeached under the *Lex Cornelia de Sicariis et Veneficis* at the instance of the younger Oppianicus; and the case against him was conducted by T. Accius, a Roman knight of Pisaurum, in Umbria. The charge directly preferred against Cluentius was that he had, within recent years, procured by poison the death of Oppianicus the elder, his own step-father, as well as of two other persons; but the prosecution also relied (and probably not by insinuation only)¹ on the prevailing belief that eight years previously Cluentius had employed corrupt means to secure his step-father's conviction for an alleged attempt on his life, as well as on other charges. For the facts of the case we are almost entirely dependent on the narrative of the text. That it contains an admixture of misrepresentation cannot reasonably be doubted, and seems to have been admitted by Cicero himself, as he is reported by Quintilian to have boasted that he had "thrown dust in the eyes of the jury."² While we cannot suppose that, in presence of the leading townsmen of Larinum, he would have ventured altogether to falsify facts with which many of his audience must have been sufficiently familiar, the orator's avowed change of attitude towards the whole

¹ This point is discussed below: see p. xlii. *sqq.*

² "Se tenebras offudisse iudicibus in causa Cluenti gloriatus est." —Quint. *Inst.* ii. 17, 21.

case, together with his general conduct of the defence, the almost entire absence of direct proof, and certain suggestive improbabilities of statement, cannot fail to put the reader on his guard against accepting in all its details the story now to be related.

Larinum was a township of the Frentani, near the northern border of Apulia and not far from the shores of the Adriatic. There, in b.c. 88, the elder Cluentius¹ had died, leaving his widow Sassia in charge of two children, the defendant A. Cluentius, then a boy of fifteen, and his sister Cluentia, probably a year or two older. Not long after her father's death Cluentia married her first cousin, A. Aurius Melinus; and it is to the circumstances by which the harmony of this union was destroyed that Cicero attributes the origin of that deadly feud between Cluentius and his mother which culminated in the present action. For Sassia grew enamoured of her son-in-law, who soon divorced the daughter and installed the mother in her place.

About the same time the elder Oppianicus became suspected of having been concerned in the death of one M. Aurius, a kinsman of Melinus and his own brother-in-law. His antecedents were not such as to inspire confidence in his innocence. His first wife had been a Cluentia, sister of the defendant's father; and of her he was said to have rid himself by poison. Insatiable avarice seems in general to have been the motive of his many enormities, which are circumstantially narrated by Cicero in the beginning of his speech, obviously with

¹ Virgil's allusion to the *gens Cluentia* may be cited here:—
“Scyllaque Cloanthus
Caerulea, genus unde tibi, Romane Cluenti.”

the view of predisposing the jury to believe that he could not possibly have escaped the hands of justice at the trial previously instituted by Cluentius. On the death of his first wife he allied himself with the family of Dinaea, a rich old lady of Larinum, and it was her eldest son that he was now suspected of having put to death. Dinaea had survived the loss of three of her children, one of whom was Magia, the daughter whom Oppianicus had married ; and now in her declining years her heart was gladdened by the news that this son, M. Aurius, who had not been heard of since he was taken prisoner in the Social War, was still alive, though in slavery. But this intelligence was not equally pleasing to her late son-in-law Oppianicus, who had calculated on being able to secure her whole inheritance for his son by Magia. Accordingly, immediately on Dinaea's death, which happened opportunely at this time,¹ he contrived to effect the murder of M. Aurius before he could be restored to his native place. This last enormity secured to him, through his son, the entire control of the property which had belonged to Dinaea and her family. But the anger of his fellow-townsmen was at length aroused against him. Forced to fly from Larinum, he betook himself to the camp of Q. Metellus, who had lately come over from Africa to co-operate with Sulla against the party of Marius. His absence, however, was not of long duration. In the troublous times that ensued he returned to

¹ In connection with Dinaea's death, it should be noticed that Cicero does not at first commit himself to saying that it was due to foul play (*vide* note on § 22). She left the bulk of her fortune to her grandson, Oppianicus the younger, and only a legacy to her long-lost son. With this one would think Oppianicus senior might have been content.

Larinum, armed, as would appear, with authority from Sulla to deal with any who might have shown themselves the enemies of his now victorious cause. He seems to have availed himself to the full of the powers thus conferred, and among his victims was A. Aurius Melinus, now the husband of Sassia.

Oppianicus seems to have been a man of considerable personal attractions. He had already buried two wives : Cluentia, mentioned above as the aunt of the defendant in the present action ; and Magia, the daughter of Dinaea, and mother of the prosecutor, Oppianicus the younger. A third, Papia, probably identical with the woman whose unnatural guilt is recorded (§ 34) without any mention of her name, had apparently been divorced, and was bringing up her boy in retirement at Teanum. She seems to have been succeeded by Novia, who had lately borne a son (*filius infans*, § 28), but whether Novia was now alive or not does not appear from the text. In any case the facilities of divorce at this period would make her existence no bar to the accomplishment of her husband's schemes. Attracted, doubtless, by the immense wealth of the now widowed Sassia, Oppianicus became a suitor for her hand. Far from reproaching him with the murder of her late husband, Sassia could find nothing to object to in the proposal beyond the fact of his having three children. This was an obstacle which a man like Oppianicus could easily remove. His two children by Papia and Novia are suddenly taken ill and die ; and with this proof of his attachment Sassia would appear to have been content, as his eldest son who bore his name survived to institute the present prosecution. No good purpose would have been served by including in the list

of victims the young man who was heir to the property of the family of Dinaea his grandmother !

The severance of Cluentius from his mother was now complete, and if we may trust Cicero's narrative, there was certainly enough in her conduct to justify it. A local incident which occurred about the same time served to bring out in strong relief the latent antagonism between him and his mother's new husband. There was at Larinum an ancient College of Mars, the members of which, like the Venerei of Mount Eryx in Sicily, seem to have occupied a vaguely-defined position intermediate between slaves and freemen. From some corrupt motive, however, Oppianicus began suddenly to maintain that they were all Roman citizens ; and the town council took steps to resist this innovation. The case was sent up to Rome as affecting the *ius civitatis*, or rights of Roman citizenship, and Cluentius was charged by the community to protect its interests. He proceeded to the capital,—probably not unwilling, in spite of what Cicero says, to embrace the opportunity of appearing in a capacity for which the education of the day was intended especially to fit the youth of the country. It was an open secret at this time that he had not as yet made any will, from inability to decide how he should deal with his mother ; and the calculation that in the event of his dying intestate his property would revert to her, as well as resentment against him for coming forward to oppose the claim of the Martiales, is said to have prompted Oppianicus to contrive the villainy which afterwards formed one of the main charges alleged against him. Keeping carefully in the background himself, he employed the services of a certain

C. Fabricius, through whom overtures were made to the slave of the physician who was at the time in attendance on Cluentius. The latter was, however, duly informed of the plot on his life, and a trap was set by which Scamander, a freedman of Fabricius, was surprised at a secret interview with the slave in question, to whom he was in the act of paying a sum of money to procure poisoning.¹

Their intended victim promptly took steps to bring the criminals to justice. Scamander, Fabricius, and Oppianicus were impeached one after the other before the court in which C. Junius administered the statute directed against poisoning and assassination. Cicero himself appeared on behalf of Scamander; but he professes in the speech before us to have soon discovered the weakness of his case. His client was all but unanimously condemned, and the jury subsequently proceeded to hear the charge against Fabricius. He, too, was convicted without hesitation. At the trial of Scamander one vote had been given in favour of acquittal, that of Staienus, a needy and disreputable senator; and it was the hope of developing the understanding which had already begun to subsist between them that, according to Cicero, induced Oppianicus to face the desperate chances of a verdict from the same jurors and the same presiding judge. He furnished Staienus with the sum of six hundred and forty thousand sesterces (about £5440) for distribution among sixteen members of the bench, whose votes together with his own would secure a majority of the whole thirty-two. Staienus made overtures to such of the jurors as he knew were open to a bribe, but secretly resolved to keep the whole sum to himself, calculating

¹ The story is examined below, p. xxv. *sqq.*

that the inevitable verdict of guilty would deprive Oppianicus of every chance of reclaiming the money from him. So, after the interval of a day or two, he told those whose votes he was understood to have secured that Oppianicus had played him false and did not mean to pay ; and that the best thing they could do would be to follow the example he would set, and revenge themselves by voting for a conviction. The lot decreed that Staienus and two of his friends should be the first to record their verdict ; and as there was a general suspicion that they had been bribed in favour of the defendant, the surprise was great when all three voted against him. The other jurors were sorely puzzled, and some began to believe that it was Cluentius who had been practising bribery. So, while a considerable number held the charge “not proven,” five actually voted for acquittal ; and it was only by a narrow majority that Oppianicus was declared guilty.

This was in B.C. 74, when a movement was beginning to be made in favour of the repeal of Sulla’s reactionary legislation. The tribune Quinctius accordingly seized the opportunity of making the corruption which was said to have been practised at the trial the pretext for a wider agitation in favour of the restoration of the *iudicia* to the equites. The suspicion that an innocent man had been unjustly condemned was fostered by his impassioned harangues, and a series of proceedings was instituted which proved fatal to a considerable number of those who had been instrumental in procuring the conviction of Oppianicus. Junius, the President of the Court, was impeached on technical grounds and found guilty. Several of the jurors were brought to trial on

divers charges, but the real motive of the prosecution seems to have been in each case the widespread feeling of indignation which prevailed against the panel of jurors on which they had served. One only was directly impeached, first for an irregularity of which he had been guilty, and again on the express charge of having received a bribe from Cluentius; but in both cases he was acquitted. The censors affixed their official stigma to the names of three of the jurors; and finally the senate passed a formal resolution denouncing the conduct of such persons as might have been guilty of bribery at a criminal trial. For the eight years which passed between the conviction of Oppianicus and the present action, the venality of the “*iudicium Iunianum*” was a byword among the people, and no one would hear a word in exculpation of Cluentius.

About two years after the trial¹ Oppianicus met his death (it was said) by a fall from his horse. Sassia endeavoured at the time to wring from certain slaves under torture some declaration that would compromise her son, but her attempt entirely failed of its object. Some three years afterwards one of these slaves—Strato, whom she had purchased from the doctor who had attended her husband in his last illness—committed a theft and a double murder in her house; and his mistress seized the opportunity of again putting him to the torture, along with Nicostratus, a slave of the younger Oppianicus. This time she professed to have extorted some sort of declaration of her son’s guilt in the matter of his step-

¹ The date may be inferred from § 179, from which it would appear that Oppianicus died three years before the consulship of Q. Hortensius and Q. Metellus—*i.e.* in B.C. 72.

father's death ; and it was on this ground that she induced the younger Oppianicus to institute the present suit against Cluentius. But the document she produced in court contained no reference to the crimes which had been the immediate occasion of the examination by torture ; it was not attested by any trustworthy person ; Strato had immediately been crucified, after having had his tongue cut out ; and, for some unknown reason, Nicostratus was not called as a witness by the prosecution. Cicero accordingly contends that the so-called deposition was utterly valueless, and that there was no proof whatever that his client had been in any way concerned in the death of Oppianicus.

Cluentius may, indeed, have been altogether innocent of the death of his step-father ; but it seems impossible to accept as conclusive the arguments which, in dealing with the charge, his advocate adduces in disproof of his guilt. Cicero represents Oppianicus as living the life of an outlaw and a vagrant, abandoned by all his friends and shunned by every human being ; and argues that Cluentius, having nothing more to fear from him, would have been the last man in the world to wish to release him from his wretchedness. But it appears from the context itself that the condemned man was not altogether so badly off. He had indeed been banished from the capital, but he had a hired lodging just outside the city gates, to which he was riding on horseback when he came by the accident which led to his death ; and he also enjoyed the hospitality of Quinctius, his former counsel, at his country residence in the Falernian territory (§ 175). Moreover, we are told that his own as well as Sassia's friends, *homines honesti atque omnibus rebus ornati*

(§ 176), interested themselves in investigating the facts of his decease. Few, again, will be disposed to attach much weight to the argument derived from the supposed improbability that bread would have been chosen in preference to a liquid as the vehicle for administering the poison (§ 173). There is more point in the statement that Asellius, whose agency Cluentius was said to have employed, was a personal friend of Oppianicus, and probably therefore an enemy of his step-son, and that proceedings would surely have been instituted against him in the first instance if the prosecutor had been confident of the justice of his case. For the rest, the story of the death of Oppianicus, as narrated by Cicero, is unsupported by any corroborative evidence; and we may further note that, while seeking to disprove the genuineness of the alleged depositions of Strato and Nicostratus, he nowhere definitely states what those depositions were.

The two minor charges of poisoning preferred against Cluentius are briefly disposed of before the discussion of the circumstances which attended his step-father's death. The first is refuted on the evidence of the senator Plaetorius, at whose house Vibius Cappadox, the alleged victim, was staying when he died; though it may be observed that Cicero incidentally admits that a member of his client's family had profited by the man's death (§ 165). In reply to the second he is able to adduce the testimony of the father of the youth who was said to have met his death by accidentally swallowing a poisoned draught which Cluentius had prepared for the younger Oppianicus; and this is perhaps the only satisfactory piece of evidence in the whole speech.

II

But the charges of poisoning preferred against Cluentius seem to have been of little moment compared with the obloquy he had incurred in connection with the trial before Junius. They constituted the most formal part of the indictment, but they do not appear to have bulked largely in the hearing of the case. Cicero was perfectly well aware that prosecution and defence alike rested really on the proof or disproof of bribery at the former trial ; and so, following the lead of his opponent Accius (§ 1), he makes a careful distinction between the charges directly preferred, which he says are capable of a very brief refutation, and the prejudice that had been excited against his client. It is a remarkable fact that nine-elevenths of the whole speech (the first fifty-nine chapters) are devoted to an elaborate attempt to show the groundlessness of the prejudice in question. It is in this part of the speech that the interest for us mainly centres. Our comparative ignorance of the technical points of law which come up in the course of the discussion makes it all the more difficult for us to determine the question at issue ; but there can be little doubt that if Cicero had been in a position to offer direct proof of his client's innocence he would have taken a wholly different line of argument. It is probably to the general conduct of the defence rather than to any particular misrepresentations that the boast about "throwing dust in the eyes of the jury" was meant to refer. The arrangement of the first part of the speech, for example, was evidently adopted from a shrewd

calculation of the effect it could not fail to produce on the minds of the bench. The orator will not address himself to the proof of his client's innocence until he has first shown that Oppianicus had, by his many enormities, made himself liable to the severest penalties, and also that his guilt in the matter of the poisoning had been virtually decided by two previous verdicts recorded against those who were believed to have acted as his agents. Accordingly he first endeavours to predispose the jury to believe that Oppianicus had been guilty of attempting the life of Cluentius, by detailing the catalogue of crime to which reference has already been made. This is the so-called *probabile ex vita* (§§ 10-42), — the argument in support of a man's guilt drawn from his known life and character. Having dealt with this he proceeds to set forth the motive for the alleged crime, which he discovers in the enmity that had arisen between Oppianicus and Cluentius, owing to the action of the latter in regard to the claims of the Martiales, and also in the expectations cherished by Oppianicus as to the reversion of his step-son's estate. This is the *probabile ex causa* (§§ 43-45), and to it is appended a narrative of the circumstances which induced Oppianicus to carry the plot into execution. As regards the first head, it is sufficient to observe that such a line of argument can never carry conviction, if unsupported by direct proof, and also that Cicero had every motive for devoting all his energies to blackening the character of his client's enemy: the somewhat remarkable passage in § 10, where he apologises to the younger Oppianicus for the tone of the references which he finds himself constrained to make to his dead father,

almost suggests a suspicion that the orator would not scruple to stretch a point in his efforts to set his client's case in the fairest possible light, and to whitewash, as it were, the living at the expense of the dead. And it may be asked how it came about that Oppianicus, if he were really guilty of so many enormities, had never been brought to trial till Cluentius raised his action against him? If the political confusion that accompanied the triumph of Sulla afforded him a protection against the exposure of some of his misdeeds (§ 25), there were others to which this consideration cannot apply. The murder of his first wife Cluentia, for example (§ 30), was anterior to the date in question, as also were those of his brother C. Oppianicus, and his brother's wife (§ 31). Any one of these crimes—if Cicero's narrative can be trusted—ought to have been enough to put a halter round his neck. There was also the charge of having murdered two of his own children, in order to satisfy Sappho's scruples about her marriage (§ 27); and, lastly, there was the assassination of Asuvius (§ 36), which threatened indeed to come to light, but was in some mysterious fashion hushed up by Oppianicus. Making every allowance, however, for rhetorical exaggeration, and for the desire to whitewash the defendant at the expense of the prosecutor's father, there can be no doubt that Oppianicus was a man of very bad character indeed.

More tangible matter for discussion is presented by the evidence which Cicero adduces under the second head (§ 43 *sq.*). We saw that Oppianicus is credited with a two-fold motive for having desired to get rid of his step-son—the opposition offered by the latter to his championship of the claims of the *Martiales*, and his own wish to

secure for Sassia the reversion of her son's estate. Now the first of these seems rather a weak motive for a murder, and the second forces Cicero to assume that Oppianicus intended subsequently to get rid of Sassia herself (§§ 45 and 52), though there is no evidence whatever to show that Sassia suspected her husband of such a design; just as he afterwards hints that she, on her part, may have been the real cause of her husband's death (§ 175). We must remember that Sassia had two daughters living,—Cluentia, sister of the defendant, and also a daughter whom she had borne to her second husband, A. Aurius Melinus, and whom she afterwards betrothed to Oppianicus the younger (§ 179). Their existence necessitates the further supposition that, if Oppianicus had designs on Sassia's life, he intended first to get her to make a will in his favour, and excluding her own daughters.

In view of the vulnerability of the arguments based on the allegation of a motive for the crime (*probabile ex causa*) we should expect direct proof of the strongest possible character that the crime was actually committed. Was an attempt made to poison Cluentius, as Cicero now maintains, and was Oppianicus at the bottom of it? It is in this connection that the Scamander story (§§ 46-61) deserves the most careful attention and examination. It is one of the greatest mysteries of the whole drama. We shall see that Cicero had committed himself, on a previous occasion, to a different version of the facts, but our first duty is to extract from the narrative contained in the speech before us the account which he now wishes his hearers to accept as historical.

The averment is that Oppianicus, scheming to get rid

of Cluentius by poison, employed Fabricius as his agent, who, in turn, delegated the matter to his freedman Scamander. The latter set himself to accomplish the end in view by bribing Diogenes, the slave of the physician who was at the time in attendance on Cluentius. The text makes it quite clear that it was of the essence of the plot that it was Diogenes who was to administer poison to Cluentius ; cp. §§ 47, 55, 61, 62.

Diogenes professed to fall in with the scheme, and his master allowed him to pass by purchase into the hands of Cluentius. It was afterwards arranged that certain friends of the latter should be present at an interview that was to take place between Diogenes and Scamander. To this interview Scamander brought a packet of money (*pecunia obsignata*)—sealed, possibly, with the seal of his master Fabricius. When the friends emerged from their concealment this packet was certainly found on the person of Scamander. What about the poison itself? If Scamander was really caught red-handed, one would have expected the averment to be that along with the money he had brought the poison, and that he was taken with both in his possession.

This is not how Cicero represents the incident, however. Whether or no the poison, as well as the money, was actually found on Scamander, it is certain that it was brought to the rendezvous by Diogenes, who was probably still regarded by the conspirators, unaware of his transference to Cluentius, as the slave of the doctor, Cleopantus. This is the plain meaning of § 53, *constitutum inter eos . . . ut medicamentum, non venenum Diogenes adferret*. The defence suggested in these words could never have been advanced, with any hope

of success, if there had been any allegation that it was Scamander, not Diogenes, who had brought the poison with him to the interview; cp. the use of *quaesitum* in §§ 55 and 62. Moreover, the natural meaning of the words *venenum diebus paucis comparatur*, in the context (§ 47), is that it was Diogenes and his friends who got ready the drug; the action of *comparatur* is the same as that of *emitur*.

What Cicero probably wishes us to infer and understand was this. Scamander came to the rendezvous with the money consideration to be handed to Diogenes for the commission of the crime. It was not unnatural that Diogenes should at the same time produce the poison which, appearing to fall in with the scheme, he had professed his willingness to administer. But the words of § 47, *pecunia obsignata, quae ob eam rem dabatur*, are not to be interpreted as meaning that Scamander gave Diogenes the money, and Diogenes gave Scamander the drug. That would be absurd, as it was Diogenes who was to do the deed. The phrase *ob eam rem*, in particular, does not mean "in exchange for the poison"; the money value of the drug would be a mere trifle. What happened, according to Cicero, was this. Diogenes brought the drug, and Scamander brought the money. Ramsay remarks that the money without the poison would have been no proof of guilt. But the *viri boni* bided their time. Probably it was only when it had become quite evident that Scamander knew what he was handing over his money for (*quae ob eam rem dabatur*, § 47) that they emerged from concealment. The circumstances permit Cicero to indulge in what may have been a more or less welcome latitude of statement. Except on the theory that the

poison was being “planted on” Scamander by Diogenes, it would not appear to matter much, in the circumstances described, whether it was actually in Scamander’s hands or not when the *viri boni* intervened. At first Cicero says that it was the money that was found on Scamander: *pecunia obsignata, quae ob eam rem dabatur in manibus Scamandri, liberti Fabriciorum, deprehenditur* (§ 47). Then immediately below he speaks as if it was the poison that Scamander had actually had about his person at the time of discovery—*cuius in manibus venenum deprehenderat* (§ 49); cp. § 50, *venenum esse deprehensum* (where see note), and *manifesta veneni deprehensione*. Again in § 53—probably with the general aspect of the exposure in his mind—he permits himself to use a phrase implying the double discovery, *cum veneno pecuniaque deprehensum*. Scamander had the money bribe on him, and this bribe could only be understood to mean one thing in connection with the poison which Diogenes had brought. So whether or no Scamander was actually fondling the drug when the friends rushed on him, it was held that there was sufficient evidence that the poison, as well as the coin, was really his. He was, in fact, responsible for both.

The foregoing may be taken as the account of the incident which a careful study of the text will show that Cicero wished his hearers to accept at the trial of Cluentius. The main difficulty in the way of doing so is that it is exactly the opposite of what Cicero himself had stated when he was counsel for the defence at the trial of Scamander (§ 52). On that occasion he had been hard pressed by P. Cannutius, and certainly—if we are to accept his present version—not without good ground. Almost unanimously, the one exception being Staienus,

the jury rejected the theory set up for the defence, viz. that it was a harmless drug that Diogenes had promised to bring (as from his supposed master, Cleophaeus), and that he was incited to bring a poison instead in order that his real owner, Cluentius, might gain material for raising a false charge against Scamander, and indirectly against Oppianicus. If that had been the case, the prosecutor asked triumphantly, what motive had Scamander for repairing to a secret rendezvous, and for bringing money in a sealed packet? (§ 53) There are certain minor difficulties, however, which may have lent colour to the contention that the whole affair had been got up by Cluentius himself. We need not ask, with many editors, “Why Diogenes was selling the drug to Scamander instead of taking it to administer himself?” That is not, as we have seen, what Cicero wishes us to believe. But we cannot help noting that the whole story turns on the testimony of Diogenes. If Diogenes was a villain, or if he allowed himself to become a tool in the hands of others, the alleged poisoning scheme may easily have been an invention of the enemy. To begin with, Diogenes was only a slave. Moreover, he was now the property of Cluentius, and as such may have been easily influenced to say what his master wanted him to say.¹ The object with which Cluentius had purchased him from his medical attendant (§ 47) does not sufficiently appear from Cicero’s narrative; it is not enough to say that this was done *quo facilius aut*

¹ The *Pro Milone* (§§ 59, 60) has been referred to as showing the impropriety of taking evidence against an accused person from the slave of his accuser. In the same way it was subsequently enacted, *ad quaestionem non esse provocandos eos quos accusator de domo sua produxit*, Ulpian *Dig.* xlvi. 1, 3.

comprehenderetur res eius indicio, aut falsa esse cognosceretur. Certainly the change of ownership cannot have conferred on Diogenes a greater degree of credibility as a witness, and yet everything depended on his evidence. Cluentius and his friends might depose that Cleopantus and Diogenes had informed them of the overtures made by Fabricius, and also that, at the secret interview, Scamander was in the act of handing over a sum of money to Diogenes; but it could have been argued that there was nothing but the bare word of the slave on which to found the statement that this money was a bribe that was being offered as an inducement to poison Cluentius, and that the whole averment against Scamander and Fabricius rested ultimately on the good faith of Diogenes. Indeed the other side might have gone farther, and suggested that the motive for buying Diogenes was not only that Cluentius might be in a position to control his evidence,¹ but also that he might secure himself against the possibility of having this slave brought against him as a witness in the event of his having to face proceedings at a later date. For it was a recognised maxim that the testimony of slaves could not, except in extraordinary cases, be taken against their masters, without the consent of the latter (*pro Rosc.* §§ 77, 120).

Again, more damning evidence of the plot against the life of Cluentius might surely have been obtainable if Scamander had been allowed more rope. The plot was exposed at a very early stage, and while this almost premature exposure may have been essential to the safety of Cluentius, it cannot have been without its disadvantages

¹ Cp. the subsequent action of Sassia, § 176.

in a court of law. What was brought to light was not so much an attempt at poisoning, as an attempt to induce a third party to commit the crime. On the other hand, we must not omit to note that Cicero can appeal, in support of his present version of the facts, to the evidence of men of considerable standing; his reference to M. Baebius, in particular, seems intended to imply common knowledge on his part, and on the part of the jury, of the truth of his averments—*qui qua fide, qua prudentia, qua dignitate fuerit meminisse vos arbitror*, § 47.¹

Scamander was found guilty by a verdict which would have been unanimous had it not been for the vote of Staienus. Subsequently Fabricius was condemned in an even more unhesitating manner, the votes of the whole bench being cast against him. These verdicts are represented as constituting *praeiudicia* against Oppianicus, into the circumstances of whose trial we have now to inquire. Cicero takes it for granted that the guilt of Oppianicus is involved in the conviction of those whom he represents as having acted as his agents. But even on a superficial examination of these *praeiudicia*, we cannot fail to be struck with certain suggestive

¹ In a letter to Mr. Fausset, Mr. H. H. House of Malvern College thinks that, in order to secure a consistent story, we must assume that both the money and the poison were brought to the rendezvous by Scamander, and that he was taken in the act of handing both to Diogenes. He would render *adferret* in § 53 (where a version of the facts is suggested which contains the only reference to Diogenes “bringing” anything to the interview) by “administer,” the word being used several times by Cicero of applying a remedy. But this does not seem to help matters. In the circumstances above narrated, it was a very obvious suggestion that Scamander was to receive a drug (not a poison) from Diogenes, and had brought money to pay for it. In defending Scamander, Cicero made the most of this suggestion, as we have seen, but he failed to convince the jury.

points of contrast. The impeachment of Scamander and Fabricius was limited exclusively to the charge of poisoning (§ 62), but there were many other counts in the indictment against Oppianicus (§§ 19 and 59). Moreover, while they were all but unanimously condemned, the conviction of Oppianicus was secured only by the narrowest possible majority. It is difficult, as we shall see, to determine exactly the composition of the majority vote by which he was condemned ; but one outstanding fact in his favour is that five jurors pronounced for his acquittal (§ 76). Against these jurors Cicero does not venture to bring any charge of bribery. At first sight it might certainly appear either that Oppianicus was not really implicated in the alleged attempt at poisoning, or that the jury may have seen good grounds for mistrusting the wisdom of its previous decisions, and that his conviction was due to some of the other charges brought against him.

However this may be, it is in his discussion of the bribery scandal at the trial of Oppianicus that Cicero is most evidently endeavouring to “throw dust in the eyes of the jury.” His statement of the case is introduced by a sophism so obvious that his audience can have had little difficulty in refuting it.¹ He assumes (§ 64) that as bribery had undoubtedly been practised at the trial in question, it must have been either by Cluentius or by Oppianicus ; but a third supposition—that both were guilty—is rendered probable by internal evidence, and is, in fact, made almost a certainty by a passage in another speech where Cicero distinctly says that Staienus had taken a

¹ For a similar fallacy Mr. Davies (*Hermathena*, ii. p. 394 *sq.*) compares the *Pro Milone*, where it is argued that either Milo waylaid Clodius with intent to murder him, or Clodius waylaid Milo.

bribe from both prosecutor and defendant.¹ The ingenious narrative by which he endeavours to account for the character and composition of the verdict is obviously open to suspicion. How came it that disreputable jurors like Staienus, Bulbus, and Gutta gave what, according to Cicero, was the right verdict, while honourable men either voted in the minority or refused to commit themselves? If Oppianicus was so notoriously guilty, and if his case had been prejudged beyond all hope of acquittal at the two previous trials, how is it that he was convicted only by the narrowest majority possible? No one except Staienus got any money from him, and Staienus had eventually to return what he got. His attempt to bribe the bench, in point of fact, completely miscarried. He had, indeed, secured promises of support from those jurors to whom he engaged to give forty thousand sesterces (£340) apiece, but they all voted against the defendant when they found that the money was not forthcoming. How is it, then, that the verdict was not all but unanimous?

That the issue turned upon a single vote is nowhere distinctly stated in the speech before us. In fact, if we were to argue from the statements made or implied in Cicero's narrative, we should incline to conclude that the numbers were eighteen to fourteen,—the latter figure being made up of the five who said "Not Guilty" and the

¹ *In Verr. i. § 39, inventus est senator qui, cum iudex esset, in eodem iudicio et ab reo pecuniam acciperet quam iudicibus divideret et ab accusatore ut reum condemnaret.* The importance of this statement cannot be overestimated, as furnishing the strongest possible proof of what might be inferred, in spite of Cicero's argument, from the facts set forth in the speech before us, viz. that Staienus was overbribed by Cluentius.

nine who said “Not Proven” (cp. note on § 107). But there is a passage in the *Pro Caecina* which makes it almost certain that the majority was seventeen to fifteen : *cum si uno minus damnarent condemnari reus non posset*, § 29. If a single vote had been transferred the result would have been a tie,—sixteen votes to sixteen ; and this would have involved *ampliatio*.

Of the seventeen who voted against Oppianicus, eight at least were suspected of being venal,—Staienus, Bulbus, Gutta, Popilius, Falcula, Aquilius, Scaevola, and Egnatius. This has led many editors to imagine that the names mentioned so eulogistically in § 107 are those of the other nine, Cicero’s motive being to vindicate the verdict of condemnation by dwelling on the high character of those by whom it was recorded.¹ If this were so, the orator would have been sailing very close to the wind. For in § 107 he professes to be merely selecting certain names from a number at his disposal ; whereas the fact is that (on the above theory) he could not have added a single one more. Nine are mentioned in all, and $9 + 8 = 17$. But it looks very like as if here again Cicero had laid a trap for his hearers. He was anxious to vindicate the verdict against Oppianicus. Of the seventeen who convicted him there were certainly eight of whom no good word could be said, and the others were probably not much better. So in § 107 Cicero introduces the names of nine jurors who had said *Non Liquer* in such a way as to make his audience fancy they are the nine who joined with the mercenary eight in voting *Guilty*. As there were five who voted for acquittal, the full number of those who voted *Non Liquer* (and so made up the

¹ Cp. *nummarii pauci* (§ 75) : only a few were “venal.”

minority of fifteen) must have been ten ; and Cicero's suppression of the tenth name in § 107 may have been intended to mislead his hearers into imagining that the nine names he is citing are those of worthy jurors who had voted for a conviction. If he had been really able to claim them as supporters of the verdict, he would certainly have used stronger language than he does in § 107, where we find *Non absolvit—ne is quidem absolvit—quorum nullius sententia est Oppianicus absolutus—in eadem sententia fuit.*¹ It is noticeable that all the fifteen jurors who voted in the minority must have previously voted for the conviction of Scamander and of Fabricius. This would seem to point to the fact that they had changed their opinion, or else that they did not regard the conviction of Oppianicus as a necessary consequence of their previous verdicts. We cannot think it likely that, if they were fully confident of the defendant's guilt, they would have allowed a suspicion that bribery had been practised against him to induce them to stultify their former decisions (§ 76).

Again as to Staienus, many considerations might be urged to show the difficulty in the way of accepting Cicero's account of his conduct at the trial. He had already voted for acquitting Scamander, and the fact that Oppianicus regarded his vote as certain is the best explanation of the statement made in § 74 that only sixteen votes were needed for acquittal, *i.e.* sixteen in addition to that of Staienus. Accordingly Oppianicus is alleged to have handed to Staienus the sum of six hundred and forty thousand sesterces for distribution among sixteen of the £5440.

¹ See a paper "de iudicio Iuniano" by J. Stöcklein : *Commentationes Monacenses*, 1891, p. 198.

jurors. His own vote was necessary to secure a verdict of acquittal, on the supposition that no one would acquit Oppianicus without a bribe ; but there is no mention of what Staienus himself was to get except a general allusion to the “hope of rewards still greater” (§ 74). The money given to him never left his hands, and he is represented as scheming to keep it all to himself ; but the event belied his hopes, for after the trial he was forced, according to Cicero, to disgorge the whole amount (*pecunia omnis*, § 78). Now it seems as difficult to believe that Staienus, who is credited in the text with a considerable degree of cunning (§ 67), can have calculated on being able to embezzle all the money, as to accept the statement that the whole sum, neither more nor less, was extorted from him after the trial. A more satisfactory explanation of his adverse vote is to suppose that he had been paid a higher price by Cluentius. His absence from court when the jury were about to consider their verdict is also more readily understood on the supposition that he had an understanding with the prosecution. They were confident of a majority even without him,—sixteen votes to fifteen, and they may have even been willing to relieve him from the odium of giving an inconsistent and shameless vote ; but Quinctius, acting in the interests of Oppianicus, and probably in ignorance of the counter-exertions of the other side, insisted on having him brought back before the trial went farther.

The case of Fidiculanus Falcula¹ presents another difficulty. The suspicion that he had been bribed on behalf of Cluentius was aggravated by the informality of his election ; he had served as a juror in a case in which

¹ See on § 91.

the decury to which he belonged was not competent to act, and, moreover, he had only heard part of the pleadings (see note on § 103). He was brought to trial first on the ground of the informality, and again on the direct charge of having received a bribe from Cluentius (see on § 104), and on both occasions he was acquitted. Cicero had elsewhere committed himself to an emphatic expression of belief in his guilt: *Utrum gravius aliquid in quem-piam dici potest quam ad hominem condemnandum quem nunquam vidisset neque audisset adductum esse pretio?* *Pro Caecina*, § 29; cp. note on § 104. But there can be no doubt that his acquittal on both occasions is a great point in favour of the present defence. It does not appear whether Falcula was the only juror introduced into the *consilium* by the process of *subsortitio*; *eos [iudices]* in § 113 may be no more than a rhetorical plural.¹ He seems certainly to have been the last elected; and as his election took place only a few days before the verdict was given, it is quite possible that it may have been arranged by the prosecution, acting in league with Junius, with the view of allowing Staienus to absent himself, and so avoid the awkwardness of condemning the man from whom he had taken a bribe.

Though the acquittal of Falcula is a standing difficulty in the way of any theory which presumes the guilt of Cluentius, the following version of the circumstances may perhaps be accepted as the nearest possible approximation to the real facts. Oppianicus gave Staienus money to secure sixteen of the jurors, whose votes, along with

¹ Cp. *In Verr.* i. § 39: where the plural, *senatores*, is also used. On the other hand in *Pro Cluent.* § 96, we have the singular *iudicem*, which seems to refer definitely to Falcula, though it is also taken as generic.

that of Staienus himself, would entitle him to a verdict. Cluentius and his friends saw that they must meet him with his own weapons, and as several of the bench were doubtless above bribery (cp. *nummarii pauci*, § 75), they had to overbribe at least some of those who had already pledged themselves to Oppianicus —e.g. Staienus, Bulbus, and Gutta. The *subsortitio* of Falcula secured them one vote which may have been doubtful before ; and it was arranged, probably to divert suspicion as far as possible, that Staienus, whose vote was not any longer necessary to secure a majority, should stay away. This arrangement, however, was overturned by the energy and promptitude of Quinctius, in spite of the obstacles that would seem to have been placed in his way (*cum id ei per viatores consulto neglegentius agi videretur*, § 74). Without Staienus there would have been a majority of one ; he votes, and the result is seventeen out of thirty-two in favour of a verdict of guilty.

It is almost certain that Cluentius was as guilty as Oppianicus.¹ Indeed, it would appear from the result that he bought just as many votes as were necessary and no more. The mere fact that Oppianicus was

¹ A strong proof of this statement may, I think, be derived from the narrative of the interview which Oppianicus had with Staienus after his conviction, § 78. It does not appear that Oppianicus intended this interview to be absolutely private and confidential between himself and his unscrupulous agent. He may have wished the *viri boni* who were present to have proof of the true purpose for which, as he alleged, the money had been placed in Staienus's hands (the *conciliatio gratiae*), or else his object may have been to show—now that the game was up—how he had been outwitted by a juror who could be proved to be so venal that he had sold his vote to the highest bidder, viz. Cluentius. That he made some sort of disclosure—probably with the view of proving that Cluentius was more guilty than himself—seems to be indicated in § 69, *quemadmodum ex ipso Oppianico postea est auditum*.

found guilty carries with it the presumption that it was the side which won that had been successful in the employment of the weapons of bribery and corruption. But if the conviction of Oppianicus was procured by bribery, what is to be said of the alleged attempt on the life of Cluentius? We have seen that Cicero's account of the discovery of the plot can hardly be considered a straightforward narrative of actual fact, and that it would be quite possible to maintain the view that the whole thing had been got up by Cluentius and his friends. The motive of the former (in addition to his general hostility to his step-father) may have been the fear that Oppianicus might oust him from the succession to his mother's estate; and the argument which seems to have been employed by the other side to show that Staienus got the money from Oppianicus to patch up the quarrel (*ad conciliationem gratiae*) may point to some genuine attempt on the part of Oppianicus to come to an arrangement with his step-son. The successful prosecution by the latter of Scamander and Fabricius may have frightened Oppianicus into an attempt to dissuade Cluentius, by an offer of money, from prosecuting his suit farther; and it may only have been on the failure of this effort that Staienus was empowered to take measures to secure a verdict for his patron.

We have seen that Cicero's opinion of the merits of the case had undergone a complete change since he appeared on behalf of Scamander, eight years before.¹

¹ The following are the passages in which Cicero had previously committed himself: 2 *Verr.* ii. §§ 78, 79, where he instances the double treachery of Staienus to illustrate a similar piece of conduct on the part of Verres (cp. i. § 39); 1 *Verr.* §§ 38, 39, where, in

He defends himself from the charge of inconsistency (*ego vero, si quid eius modi dixi, neque cognitum commemoravi neque pro testimonio dixi*, etc., § 139), just as he endeavours to demolish the weight of the previous verdicts against his client by showing how entirely they had been due to the prevailing *invidia*. There can be little doubt that this change of attitude is partly due, as the late Professor Nettleship pointed out,¹ to the altered position of the equestrian order. From the tribunate of C. Gracchus to the period of Sulla's legislation the equites had enjoyed an almost uninterrupted monopoly of the coveted privilege of serving as jurors in the law-courts.² Among the reactionary measures of Sulla was a law by which the *iudicia* were again transferred to the senate. But the senators were no more successful in their administration of justice than the equites had been before them; and the corruption practised at the trial before Junius furnished an excellent handle for the agitation which was now set on foot for the purpose of securing an alteration of the existing

citing cases of senatorial corruption, he alludes to the *litis aestimatio* at the trial of Scaevola as a proof that bribery had been practised against Oppianicus; *2 Verr.* i. § 157, where he accuses Verres of having falsified the entries in his official register in order to conceal his connivance at the crime of Junius (*quod falsum codicem protuleris*). Further, in the *Pro Caecina*, §§ 28, 29, where he is endeavouring to depreciate the value of Falcula's evidence, he speaks in language very different from that of the *Pro Clientio* of the grave informality of which Falcula had been guilty.

¹ *Journal of Philology*, No. xvi.

² The Lex Servilia of B.C. 106 (cp. § 140) proposed to associate the senate with the equites in the *iudicia*, but did not continue long in force; a similar motion was brought forward by the tribune Drusus in B.C. 91 (*vide* on § 153); and in B.C. 89 the Lex Plautia proposed that each of the thirty-five tribes should furnish fifteen persons of any standing whatever.

system. In this agitation the tribune Quinctius, who had acted as counsel for Oppianicus, figured conspicuously: *rem a subselliis ad rostra detulit*, § 111. Part of his policy was to discredit those jurors who had given proof of their venality at the late trial either by raising an action against them, or by calling for the interposition of the censors. Cicero dwells on the fact that in most cases the actions raised did not depend on any charge of corruption at the trial of Oppianicus, which was only introduced, as it were, by a side-wind. Possibly there may have been a motive for this. The senatorial juries before which the cases were heard could not have convicted on the direct charge of bribery without casting a slur upon their own order. But they had to bow before the storm. The feeling excited against the administration of justice as conducted by the senatorial courts established by Sulla had become so strong that it was easy to secure the conviction of the incriminated jurors on any other charge that might be brought against them.¹ His attitude in connection with the impeachment of Verres shows us that Cicero himself shared in the resentment commonly felt against these juries; see especially *Verr.* i. § 38. There is, indeed, in his defence of Cluentius, a passage in which he sets the senatorial ad-

¹ Cp. the case of Junius: *idcirco illis legibus condemnatus est, quod contra aliam legem commisera*, § 92. There appears to be some force in what Mr. Davies says: "The Roman juries would seem to have been quite capable of finding a man guilty of bigamy because they believed him to have committed forgery eight years before" (*Hermathena*, ii. p. 391). See § 97, where, on his trial for *maiestas*, Bulbus is at the same time accused of having taken a bribe at the trial of Oppianicus; and § 99, where we are expressly told that Staienus, when also being tried for *maiestas*, had to face the argument which the opposing counsel, the Cominii, founded on his conduct at the trial of Oppianicus. Cp. also § 114.

ministration in a fairer light,¹ evidently because he was conscious that it was his interest to uphold the character of the tribunal which had given a verdict favourable to his client Cluentius in the previous case of Scamander. But it should be remembered that his defence of Cluentius was conducted four years after the compromise effected, in the consulship of Pompey and Crassus (B.C. 70), by the *Lex Aurelia*, which provided that the jurors should thenceforward be selected in equal proportions from the senate, the equites, and the *tribuni aerarii*. At the trial of Scamander, in B.C. 74, it is probable that Cicero, as counsel for the accused, would inveigh strongly against the senatorial conduct of the *iudicia*, especially as the scandal of the marked voting-tablets (see note on § 130) had, about the same time, illustrated the venality of the jurors in a manner that must have been acceptable to those who were beginning to agitate for the restoration of the privileges of the equites. Cicero had always had the interests of the equestrian order at heart, and hence his protest—the justice of which we have next to consider—against a proceeding that would render the members of that order liable to the conspiracy clause in the sixth chapter of the *Lex Cornelia de Sicariis et Veneficis*, which was technically applicable to senators alone.

¹ *Tum vero illa iudicia senatoria non falsa invidia, sed vera atque insigni turpitudine notata atque operta dedecore et infamia, defensioni locum nullum reliquissent* (§ 61).

III

The point has been much discussed whether Cluentius was really accused at all of bribery,—whether his alleged conduct at the trial of Oppianicus was not introduced by a side-wind (as had already been done in the cases of Junius, Bulbus, Popilius, and the others), in order to secure his conviction on the charges of poisoning, which were alone directly preferred against him. The question turns on the provisions of the *Lex Cornelia*, under which the attack on Cluentius was delivered. If we had the full text of this statute, and if the speech for the prosecution had also come down to us, the point here raised would admit of an easy solution. But for the terms of the indictment we are wholly dependent on Cicero's speech for the defence, as indeed we are also, to a great extent, for the terms of the statute, so far as it was applicable to the present case. The fact that there should be any dubiety about so essential a matter may be taken as another proof of the artificial and highly-elaborated character of Cicero's defence.

The *Lex Cornelia de Sicariis et Veneficis* provided primarily, as its title implies, for the punishment of persons who had been guilty of murder, especially by poisoning. But it also contained a section (the sixth) which threatened pains and penalties to those who should conspire to procure the conviction of a person innocently accused on a capital charge. The peculiarity of this section was, as we shall find, that its operation was restricted to senators and the holders of certain offices.¹

¹ Sulla had embodied in this law a *Lex Sempronia* passed by C. Gracchus in B.C. 124, and directed against judicial corruption

The question therefore arises, Was Cluentius, who was an eques, accused, not only of poisoning, but also under that section of the Lex Cornelia which related to conspiracy and judicial murder, and which was applicable only to senators?

To this question we shall find that the proper answer is that he was so accused. Deliberately, and with their eyes open,¹ the prosecution endeavoured to apply this section to Cluentius, not only on the ground that he was morally guilty under it, in respect of his conduct at the trial of Oppianicus, but also because the time had come when, especially in the altered conditions of judicial administration, the penalties which previously attached to senators only should be extended, by the establishment (even retrospectively) of such a precedent as this, to others who might be guilty of similar misdemeanours.

on the part of senators: *ne quis iudicio circumveniretur*, § 151 (where see note). The exact phraseology of his statute may be partly restored from § 148, where the word *Recita* shows that we have in this passage, so far as it goes, the actual words of the law:—*iubet lex ea, qua lege haec quaestio constituta est, iudicem quaestionis . . . cum iis iudicibus, qui ei obvenerint . . . quaerere de veneno. In quem quaerere? infinitum est. QUICUMQUE FECERIT, VENDIDERIT, EMERIT, HABUERIT, DEDERIT. Quid eadem lex statim adiungit? Recita. DEQUE EIUS CAPITE QUAERITO. Cuius? qui coierit? convenerit? Non ita est. Quid ergo est? dic. QUI TRIBUNUS MILITUM LEGIONIBUS QUATTUOR PRIMIS QUIVE QUAESTOR TRIBUNUS PLEBIS—deinceps omnes magistratus nominavit—QUIVE IN SENATU SENTENTIAM DIXERIT. Quid tum? Qui eorum coit, coierit, convenit, convenerit, quo quis iudicio publico condemnaretur.*

¹ In the words *Nimirum tibi istud lex ipsa renuntiavit* (§ 143) Cicero obviously implies his belief that his opponent Accius was aware of the true construction of the statute, in spite of his argument to the contrary. Cp. § 149, *Nolo quemquam eorum qui adsunt existimare me quae de lege ab Accio dicta sunt, si reticuerim, comprobare.*

This solution of the difficulty is not, however, the one which has recommended itself to some recent students of the *Pro Cquentio*. Before setting it forth in greater detail, it may be well to examine the arguments of the other side. These have been stated with the greatest lucidity and force by Dr. Carl Bardt in a paper which is well worthy of careful attention.¹

Dr. Bardt is of opinion that Cquentius was accused of poisoning only, not of judicial murder ; that consequently no charge was made against him under the sixth chapter of the Cornelian Law ; and that it is in the elaborate refutation of the existing prejudice that Cicero is endeavouring to “throw dust in the eyes of the jury,” by defending his client from an accusation which had not been made against him, in order that he may afterwards gain the sympathies of the court by refusing to take advantage of the technical defence of which he could so easily have availed himself. Both sides devoted a quite disproportionate share of their attention to the odium which had been excited by the trial before Junius,—the prosecution, because they recognised in this the deadliest weapon they could wield against Cquentius, and Cicero, for the defence, because he felt that he must meet them on their own ground, and deal with the charge as though his client—Roman knight as he was—was being actually prosecuted for judicial corruption. Conscious that Cquentius cannot be found guilty of corruption under a clause which applies only to senators and to the high

¹ “Zu Cicero’s Cquentiana” in the Programm of the Gymnasium zu Neuwied, Ostern, 1878. Dr. Bardt’s views are accepted by Iw. Müller in *Bursian’s Jahresbericht*, ii. p. 204 (1878). Similarly Mr. Davies, *Hermathena*, ii. (1876) p. 391 *sqq.*, and also Mr. Lendrum, *ibid.* xiv. (1888) p. 365.

officers of State, but by no means confident of his innocence in point of fact, his advocate first endeavours to show that he could not possibly have had any motive for conduct such as might have rendered him morally liable to the provisions of the clause in question, and then generously disclaims the technical plea by which he might have declined to say a single word about the circumstances which led to the conviction of Oppianicus.

The division of the case adopted in the opening paragraph, and carefully observed throughout the speech, is cited as one of the main proofs of the correctness of the above theory. The prejudice arising out of the bribery scandal (*invidia*) is kept distinct from the charges directly alleged against Cluentius (*crimina*) ; and Cicero says (§ 3) that, while he is able to disprove the latter, he must, in dealing with the former, throw himself to some extent on the protection of the court. In answer to this, it must, however, be observed that the orator does sometimes use *crimen* where the argument would lead us to expect the more insidious term *invidia* : e.g. § 8, *Adgrediar ad crimen cum illa depreciatione*, etc., and *Hodierno enim die primum [veteris] ipsius criminis diluendi potestas est data* ; § 143, *purgandi istius invidiosi criminis* ; § 125, *Cluentianae pecuniae crimen* ; cp. § 97, *At est hoc illi crimen obiectum*.

It is further argued that in the transition to the second part of the speech, where, on the assumption that the deception has now done its work, the orator is disclaiming the technical defence which he wished the jury to believe he might have employed, he expressly states that the question of bribery at the trial of Oppianicus is not before the court. Here the passage mainly founded on

is § 160, which contains the following: *Reliqua perpauc sunt, quae quia vestrae quaestionis erant idcirco illi statuerunt fingenda esse sibi et proferenda, ne omnium turpissimi reperirentur si in iudicium nihil praeter invidiam attulissent.* But it is not on the ground that Cluentius is not being impeached for judicial corruption, that Cicero implies that the attendant *invidia*, unlike the *crimina*, does not fall within the jurisdiction of the court. He is not denying that this charge is a count in the indictment; what he asserts is that Cluentius, as an eques, is not liable under the statute on which the indictment was framed. The same explanation may be given of § 164, *Cognoscite nunc id . . . quod vestri iudicii est . . . de criminibus veneni.* The charge of bribery was not *vestri iudicii*, because Cluentius was not a senator but a knight. Moreover, two important passages can be cited from Cicero's speech which may be considered sufficient of themselves to disprove the theory under discussion.¹ The first is § 90, where in connection with the subject of "judicial murder" there is an express reference to the Lex Cornelia as the statute under which Cluentius was accused of his crime: *dicat qui vult hodie de illo populo concitato, cui tum populo mos gestus est, qua de re Iunius causam dixerit; quemcumque rogaveris, hoc respondebit, quod pecuniam acceperit, quod innocentem circumvenerit. Est haec opinio. At si ita esset, hac lege accusatum oportuit qua accusatur Habitus.* The second passage (§ 144) shows even more clearly that the charge of bribery and corruption must not only have

¹ I am indebted for part of the argument to a paper by Fr. Boll, "Num Cluentius de crimine iudicii corrupti causam dixerit," *Commentationes Monacenses*, 1891, p. 201 *sqq.*

been directly pressed by the prosecutor, but must have actually formed a count in the indictment: *Nam, ut haec ad me causa delata est, qui leges eas ad quas adhibemur et in quibus versamur nosse deberem, dixi Habito statim, eo capite, "QUI COISSET QUO QUIS CONDEMNARETUR," illum esse liberum, teneri autem nostrum ordinem.*

Lastly, it is urged that it is impossible to believe that the prosecution would have brought a charge under a statute which they knew did not apply. But this argument fails to take sufficient account of the political motives which seem to have actuated the prosecution in seeking, by establishing a precedent, to secure that extension of the statute which the altered circumstances of judicial administration seemed to demand. And, again, it appears far more improbable that Cicero would have ventured to presume on a Roman jury's ignorance of the real nature of the issue it had to try, even to the extent of falsifying the indictment as stated by the prosecution. Surely no amount of subtle misrepresentation could have misled the jurors in such a way as to make them give a pleader credit for refusing to avail himself of a technical defence which could have sheltered his client from a charge never alleged against him. If there are several incidental indications which seem to support the theory under discussion,¹ there are at least

¹ Bardt contrasts especially the general expressions used to introduce the charge of bribery (e.g., *Corrupisse dicitur*, § 9; *dicitis*, § 39; *at enim*, § 88; *est haec opinio*, § 90; *dicitur*, § 138) with the more definite *dicis* or *dixisti* usually employed in references to the charges of poisoning directly preferred by the accuser. He also refers to the fact that the word *absolvere* is avoided throughout, though it is employed in speaking of cases analogous to the present (e.g. § 158). But see the note on *causam obtainere* in § 145, where, so far from being indefinite, the phrase is shown to be equivalent to *absolvi*.

as many on the other side. *Hac lege ipsa* (§ 116) can only refer to the sixth chapter of the Cornelian Law; nor does it seem natural to suppose that in another passage¹ Cicero is using the word *lex* ambiguously, with the view of inducing the jury to believe that Cluentius was impeached under the sixth chapter, while his words only commit him to the Lex Cornelia in general. Further, he expressly says that his client has been charged under a statute (viz. the sixth chapter of the law) which applies only to senators and those who have held office;² and with regard to such passages as those above referred to (e.g. § 164), where he tells the court that the question of bribery is not before them, it seems more natural, as we have seen, to suppose that he is speaking as one who is availing himself of the plea which he had previously disclaimed, than that he now for the first time ventures to state definitely what he has previously endeavoured only to insinuate, viz. that Cluentius was impeached only under that section of the Cornelian Law which related to poisoning, and to which all alike were amenable.³

The real truth seems to be that Cluentius was impeached under both sections of the Cornelian Law,

¹ *Illi non hoc recusabant, ne ea lege accusarentur qua nunc Habitus accusatur, quae tunc erat Sempronia, nunc est Cornelia; intellegebant enim ea lege equestrem ordinem non teneri* (§ 154).

² *A. Cluentius causam dicit eques Romanus ea lege qua senatores et ei qui magistratum habuerunt soli tenentur* (§ 156).

³ The view of Zumpt (*Röm. Criminalrecht*, ii. 2), that Cluentius was really amenable to a charge of corruption under the provisions of the Lex Cornelia, cannot be maintained. He supposes—relying on very meagre evidence—that in addition to the chapters quoted by Cicero (§ 148) as binding senators, official and unofficial (*qui magistratum habuerint, quive in senatu sententiam dixerint*), there was another clause (misquoted by Cicero, § 157) which was applicable to all who by false witness should compass the ruin of an innocent man. Cp. Fausset, *Introd.* p. xix.

and that though the impeachment nominally rested on the direct charges of poisoning, the real strength of the prosecution lay in the prevailing belief that he had by corrupt means procured the conviction of his step-father eight years before. The inclusion in the indictment of the poisoning charges (which seem to have had very little ground to rest on) was probably motived by the fact that the prosecution were conscious of the technical difficulties in the way of securing a conviction on the charge on which they really relied. The accusers of Cluentius were aware that technically he could not be convicted under the sixth chapter, and hence the argument of Accius that in equity the same law should in existing circumstances be held binding on both orders (§ 145).

If the text of the speech is read over in the light of the argument here set forth, I venture to think it will be found more clear and consistent than it is possible to make it on any other theory. Cicero starts by saying that Accius had made two divisions of his speech. In the first he had endeavoured to show that *the statute ought to be made applicable to Cluentius* (cp. §§ 145, 150, and 156 quoted in note on p. lii.); of this argument Cicero says, quite justly, *mihi niti et magno opere confidere videbatur invidia iam inveterata iudicii Iuniani* (§ 1). These words do not necessarily imply that Accius had introduced the subject of the *invidia* by a side-wind, and not as a direct count in the indictment. They merely contain an anticipation of the way in which Cluentius's advocate intends to meet his opponent, viz. by arguing¹ that the unpopularity of the conviction

¹ See § 143 *sq.*, where cp. especially *facto . . . lege* with *invidia . . . lege*, § 1.

of Oppianicus, and the admitted fact that bribery had been practised at his trial, ought not to prejudice the court against Cluentius, especially as Cluentius is not technically amenable to the statute on which Accius had based his case. This latter fact—though he afterwards professes that Cluentius does not wish to found on it (§§ 144-145)—Cicero at once puts forward in his reference to the second division of the prosecutor's speech, *qua de re lege est haec quaestio constituta* (§ 1), and *quae propria est iudicij vestri et legitimae beneficij quaestionis* (§ 2). This need not be interpreted to mean that the *crimina* alone constituted the formal indictment; it is rather a forewarning of the position which Cicero afterwards intended to take up (§§ 143-160; cp. especially § 148, *iubet lex ea qua lege haec quaestio constituta est . . . quaerere de veneno*). He cannot deny the fact of the bribery scandal (§ 4); if the prosecution had not endeavoured to fasten it directly on Cluentius, their case would have been a very thin one indeed (§ 160). He therefore proceeds at once to meet the *multorum annorum accusatio* (§ 8), and states explicitly, at a subsequent stage, his satisfaction that the bribery scandal *has* at last been made a definite issue: *ante hoc tempus omnino ista res suo nomine in iudicium numquam est vocata . . . ut hodierno die primum causa illa defensa sit* (§ 88).

What expectation, it may be asked, can the prosecution have entertained that the court would uphold their contention that Cluentius ought to be held liable to those provisions of the Lex Cornelia which dealt with “judicial corruption”? Precedent was against them. The Sempronian law passed in B.C. 124, *ne quis iudicio publico circumveniretur* (§ 151), was applicable to senators alone;

though the *iudicia* were afterwards transferred to the equites they were not made liable to its provisions,—*intelligebant ea lege equestrem ordinem non teneri* (§ 154). Hence the opposition to Livius Drusus when he attempted to extend the operation of the statute; see note on § 153.

In restoring the *iudicia* to the senate, Sulla obviously feared that his new jurors would be exposed to the risk of corruption mainly from members of their own order, who had the monopoly, for example, of those provincial governorships which furnished such tempting opportunities for malversation and misdemeanour. His statute was, accordingly, directed primarily against those senators who should violate its provisions while serving in a judicial capacity, and afterwards against the whole body of the senators, including those officials who had held magistracies by popular election. It may, indeed, appear strange that Sulla should have made no provision for bringing to justice others who, like Cluentius, were charged with corrupting members of his senatorial juries. But the passages in Cicero (§§ 148, 157; cp. note on § 104) are quite explicit. “If I had nothing to do,” he says, “but to win this case, I would just read out the law and sit down” (§ 145). He protests against extending to others—whether equestrian jurors (*de eis qui rem iudicarint*, § 152) or members of the general public (*populus Romanus*, § 151—where see note—and § 157)—a statute which was directed against the juries of Sulla’s senatorial *régime*, and works on the fears of the mixed tribunal he was addressing by pointing out the danger of such a precedent.¹

¹ See especially § 153, *Quis enim de homine audeat, paulo maioribus opibus praedito, vere et fortiter iudicare, cum videat sibi de eo quod*

We are able to infer from the text of Cicero's speech that his opponent Accius had made a good deal of the point under discussion. He had professed to believe that Cicero would found on the letter of the law (*praesidio legis*, § 143). He had dwelt on the moral guilt of the accused, and had confidently appealed to equitable considerations.¹ As this argument was open to him, whether he brought an accusation under the sixth section of the statute or not, there is some ground for astonishment that he should have risked such a procedure. The demolition of his case, so far as it involved a specific charge against Cluentius under this head, would inevitably facilitate the defence in regard to the accusations of poisoning. But it is just here that the political motive referred to above must have influenced the prosecution ; and Cicero was prompt to recognise the fact. The charges of poisoning concerned Cluentius individually, but the other count of the indictment affected the public interest : *agitur in criminibus A. Cluenti proprium periculum, in invidia causa communis* (§ 3). The leaders of the popular party in B.C. 66 were just as ready to criticise the constitution of the *iudicia*, as administered under the Aurelian Law, as the opponents of the senatorial monopoly had been in earlier days. The activity of the

coierit aut consenserit causam esse dicendam ? Also § 157, Quis de plebe Romana testimonium dixit umquam, cui non hoc periculum T. Accio auctore paratum esse videatis ? Nam dicturum quidem certe, si hoc iudicium plebi Romanae propositum sit, neminem umquam esse confirmo.

¹ *Neque me illa oratio commovet quod ait Accius indignum esse facinus, si senator iudicio quempiam circumvenerit, legibus eum teneri : si eques Romanus hoc idem fecerit, non teneri* (§ 145) ; *iniquum tibi videtur, T. Acci, esse non iisdem legibus omnes teneri* (§ 150) ; *agit enim sic causam T. Accius, adolescens bonus et disertus, omnes cives legibus teneri omnibus* (§ 156).

tribunes, in particular, may be specially noted as having called forth some remarkable denunciations on the part of Cicero in the course of his defence : e.g. § 95, *quam quidem rationem vos, iudices, diligenter, pro vestra sapientia et humanitate cogitare et penitus perspicere debetis, quid mali, quantum periculi unicuique nostrum inferre possit vis tribunicia, conflata praesertim invidia et contionibus seditiose concitatis.*¹ The object of the party championed by the tribunes was to secure an extended application of the statute, by the precedent which they hoped would be established by the conviction of Cluentius : *nec nunc quidquam agitur—mihi credite, iudices, et prospicite id quod providendum est—nisi ut equester ordo in huiusce legis periculum concludatur* (§ 152).² The opportunity was a favourable one. Many of those who had condemned Oppianicus had been themselves convicted on a criminal charge, and the censors had taken action in the matter by affixing their stigma to the name, among others, of Cluentius himself. The prosecution must have hoped that—especially as the action was, in any case, being brought under another section of the same statute—the jury would be unwilling to tarnish its reputation by a share of the *invidia iam inveterata iudicij Iuniani*, such as would attach to it if it refused, on technical grounds, to convict Cluentius of a crime of which he was morally

¹ Boll also compares §§ 93, 94, 103.

² Even had the trial of Oppianicus been held after the passing of the Aurelian Law, and even had Cluentius sat on the bench as a juror and been guilty of corruption, he would still have been technically exempt from the provisions of the Cornelian Law, though no doubt liable to the spirit of the statute ; much more when he was only accused of having bribed a jury—an offence which, so far as we know, could, under Sulla's laws, be prosecuted only when the criminal was a senator or high officer of State.

guilty. That some such straining of the letter of the law was—in circumstances which would in all probability have commanded general approval—confidently looked forward to may be inferred from Cicero's own words : *Haec si T. Accius aut cognovisset aut cogitasset, profecto ne conatus quidem esset dicere, id quod multis verbis egit, iudicem quod ei videatur statuere et non devinctum legibus esse oportere* (§ 160) ; cf. § 155, *populum Romanum . . . non metuere ne lege ea quam numquam ipse iusserit, et quaestione qua se solutum liberumque esse arbitretur, per paucos iudices adstringatur.*¹

Cicero's boast, reported by Quintilian, that he “had thrown dust in the eyes of the jurymen at the trial of Cluentius,” makes it probable that his client was acquitted. In respect of the charges of poisoning brought against him, the verdict was, in all likelihood, a just one ; but we have seen that there are grave reasons for doubting the validity of the defence set up by his counsel in regard to his conduct at the trial of Oppianicus. Sufficient ground has been shown, from considerations internal to the case, why Cicero's account of the circumstances of that trial cannot be accepted as a correct statement of facts. The probability is, as Mr. Davies has put it, that “there was bribery on both sides, and Cluentius was able to bribe the odd man.” And grave suspicion has been shown to attach, also, to Cicero's account of

¹ A similar straining of the letter of the statute is attributed to Julius Caesar, when, a few years after this date, he acted as a “iudex quaestionis” : *eos quoque sicariorum numero habuisse qui proscriptione ob relata civium Romanorum capita pecunias ex aerario acceperant, quamquam exceptos Cornelis legibus* (Suet. *Caes.* II. Cp. Boll, p. 209 ; Lange, *Röm. Alt.* III. 2 230).

some of the incidents which preceded and led up to the trial of Oppianicus—notably the alleged attempt to poison Cluentius, and the mysterious proceedings of Scamander and Diogenes. The strongly rhetorical cast of the whole speech would in itself be enough to raise a doubt in regard to some, at least, of the statements which it contains. The art of “abusing the other side,” in a weak case, was by no means unknown to the greatest of Roman advocates. He has himself warned his readers against looking on judicial orations as unbiassed and impartial records of fact.¹ Though he appears at the time to have neglected the possibility of the particular application being made, it is obvious that this warning may be as fairly applied to the *Pro Cluentio* as to any of his other orations. His previous defence of Scamander illustrates the difficult position in which, in common with other advocates, he sometimes found himself, when he was called upon *eadem de re alias aliud defendere, cum plus uno verum esse non possit* (*De Or.* ii. § 30). We may allow the charge of having set his client’s case in too fair a light to rest upon him without much fear that it will be held to discredit his moral character. The exigencies of an advocate’s position have always been proverbial, and the question how far his obligation to his client should be permitted to obscure the finer shades of truth and falsehood is still a fruitful subject of debate.

¹ *Sed errat vehementer si quis in orationibus nostris, quas in iudiciis habuimus, auctoritates nostras consignatas se habere arbitratur: omnes enim illae causarum ac temporum sunt, non hominum ipsorum aut patronorum* (§ 139, where see note). Cf. *patroni est non numquam veri simile, etiam si minus sit verum, defendere* (*De Off.* ii. 14, 51).

ANALYSIS

INTRODUCTORY.—Cicero states that he will follow the example of Chs. i.-iii. his opponent Accius, and divide the case into two parts, the first dealing with the popular feeling that had been excited by the trial of Oppianicus (*invidia*), the second with the charges of poisoning made against his client (*crimina*). Under the second head the case for the defence may be very briefly stated ; but the first—referring as it does to circumstances which had for eight years been made the subject of public agitation and continuous misrepresentation—must be treated at greater length. The orator appeals to the jury to lay aside all prepossessions, and accord him a fair hearing.

FIRST DIVISION OF THE CASE.—The existing prejudice against Chs. iv.-lii. Cluentius rests on the unfounded belief that he had procured the §§ 9-14. conviction of Oppianicus by bribery.

§ 9. By way of refutation, Cicero undertakes to show (a) that Oppianicus was guilty, and (b) that bribery was practised not by Cluentius, the plaintiff, but by Oppianicus, the defendant.

§§ 10-42. *Crimes of Oppianicus*

Cluentius was forced to prosecute by the infamous wrongs he suffered from Oppianicus, § 11. The family of Cluentius ; origin of the feud between him and his mother Sassia, §§ 11-18. The grounds on which Oppianicus was condemned—a catalogue of abominable crimes ; Cluentius, in particular, was driven to prosecute him by an attempt on his own life, §§ 19-42.

§§ 43-61. *Plot against Cluentius*

Motive of the plot and occasion of the collision between Cluentius and Oppianicus, §§ 43-45. The plot is detected, §§ 46-48. Conviction of Scamander and Fabricius, and, by implication, of Oppianicus, §§ 49-61.

§§ 62-87. Trial of Oppianicus

Oppianicus, in view of these *praeiudicia*, had every motive to practise bribery ; Cluentius had none, §§ 62-64. His dealings with Staienus ; knavish conduct of the latter, §§ 65-76. The prejudice against Cluentius due to the political agitation of the tribune Quintius. His innocence proved from his account-books, whereas there is no plausible explanation of the transaction between Oppianicus and Staienus, §§ 77-87.

§§ 88-142. Previous Decisions alleged to imply the Guilt of Cluentius

The issue of the guilt or innocence of Cluentius has never till now been directly raised, § 88. The various *praeiudicia* quoted against him ought not to be allowed to prejudice his case. In particular, the condemnation of C. Junius was due to a passing outburst of popular feeling, §§ 89-96. The convictions of Bulbus, Popilius, Gutta, Staienus, Fidiculanus Falcula, and Septimius Scaevola were due to extraneous causes, not to any charge of corruption at the trial of Oppianicus, though the prevailing belief that his conviction had been procured by bribery was used in each case as a weapon against the defendants, §§ 97-116.

The censors' stigma cannot rank as a judicial decision, §§ 117-134. Nor can anything be founded on the will of Egnatius, § 135, or on the resolution of the senate, which was most guarded in its terms, §§ 136-137.

No more can Cicero's own previous utterances and opinions be quoted against him : retraction of what had previously been said in ignorance of the facts, §§ 138-142.

Chs. **TECHNICAL ARGUMENT ON THE APPLICABILITY OF THE STATUTE.**—It is in deference to his client's wishes that Cicero does not avail himself of the protection of the letter of the statute ; he relies on the merits, §§ 143-145. But as a matter of fact, according to a strict interpretation of the law (§§ 146-147), Cluentius, being a Roman knight, is not amenable to the section of the Lex Cornelia which deals with judicial corruption, §§ 148-149. The motive of the statute, as originally enacted by C. Gracchus, and afterwards in its existing form by Sulla, §§ 150-155. Unfairness of the arguments advanced by the other side in this connection, §§ 156-160.

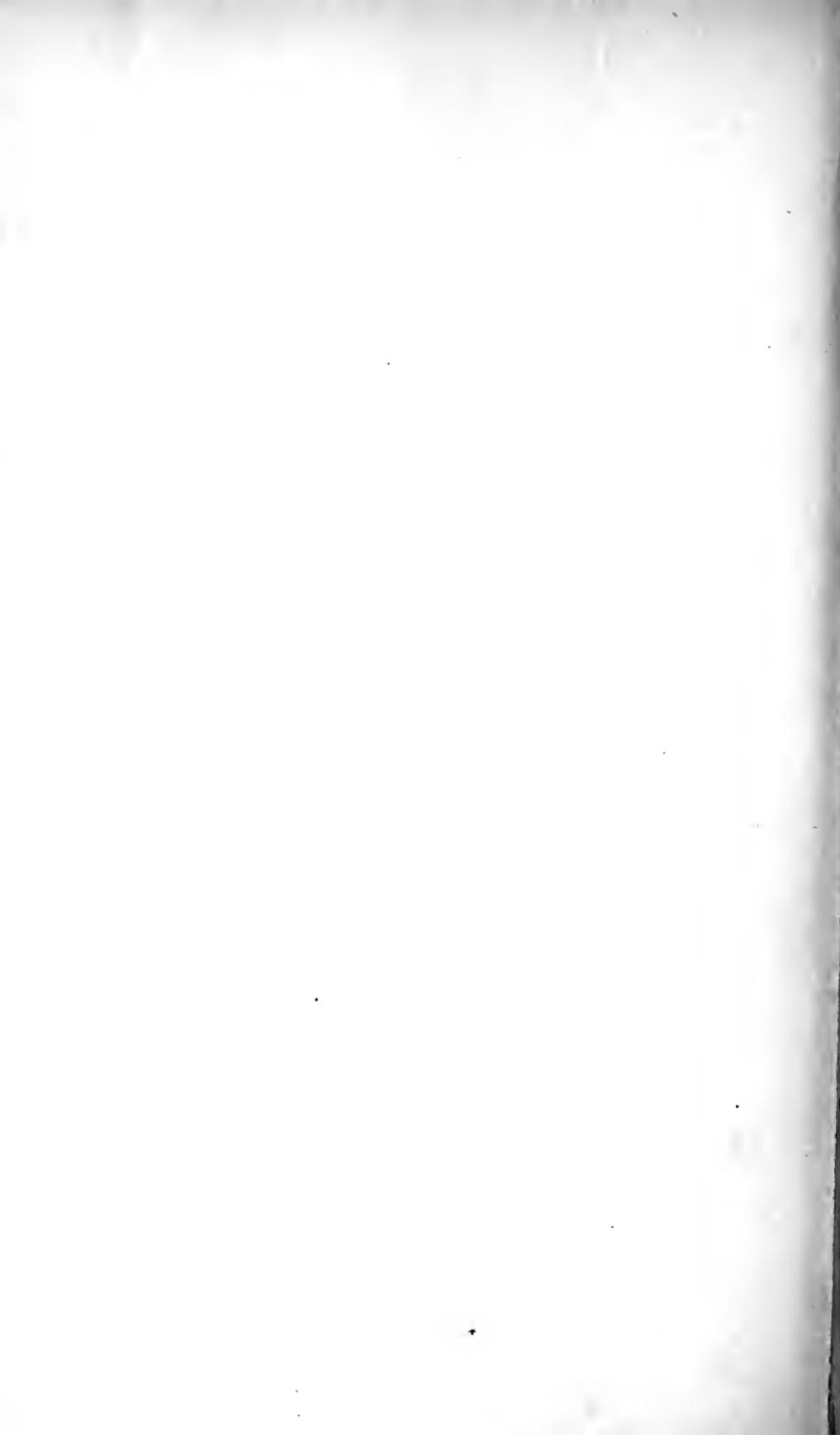
SECOND DIVISION OF THE CASE.—Refutation of the charges of Chs.
poisoning. lix.-lxviii.

§§ 161-164. Disproof of unfounded aspersions on the personal character of Cluentius,—the result of eight years' mud-raking on the part of the prosecution ! §§ 161-194.

§§ 165-168. Cluentius is altogether innocent of the deaths of Vibius Cappadox and Balbutius, the latter of whom he is accused of having poisoned in mistake for the younger Oppianicus.

§§ 169-194. Nor had he any motive for attempting the life of Oppianicus the elder. The evidence put forward as implicating him is utterly valueless ; and the prosecution is altogether due to the unnatural hatred of his mother, Sassia.

CONCLUSION.—Cluentius deserves sympathy as the son of such a mother. His fellow-townsmen and others bear testimony to his high character. The speaker commends him to the justice and the clemency of the court. Chs. lxix.-lxxi. §§ 195-202.



THE SPEECH OF CICERO IN DEFENCE OF CLUENTIUS

GENTLEMEN OF THE JURY—I was struck by the fact that 1. the prosecutor's speech, taken as a whole, was divided into two parts, one of which, as it seemed to me, was made to rely for its main support on the deeply-rooted prejudice against the trial before Junius, while the other touched with diffidence and distrust, and as a mere matter of form, on the question of the charges of poisoning, for the hearing of which this court of inquiry has been by law established. In speaking for the defence, I have accordingly determined to keep to the same arrangement, separating that prejudice from those charges in such a way that it shall be evident to all that I have not sought either to evade any issue by suppression, or to darken it by a cloud of words. But when I consider how I must 2. direct my efforts under each head, it seems to me that the one part—that, namely, which properly belongs to your court and to a legal inquiry into an allegation of poisoning—will be very short indeed, and will not require any great oratorical effort; whereas the treatment of the other, which is quite foreign to a judicial tribunal, and is more appropriate to the heated atmosphere of public

meetings inflamed by seditious arts than to the serenity and dispassionateness of a court of justice, will obviously involve considerable difficulty and exertion. In this perplexity, however, there is one consideration, gentlemen, from which I take comfort. In listening to accusations directly preferred, it is your habit to throw on counsel the whole burden of their refutation, believing that you should do nothing more for the deliverance of the accused than his advocate may have been able to secure by clearing him of what is laid to his charge, and generally to substantiate in the course of argument. But this is not the way in which you ought to deal with prejudice ; there you are bound, in putting the case to yourselves, to consider what counsel should say rather than what is actually said by us. For while it is his own personal status that is endangered by the charges brought against Aulus Cluentius, the prejudice in question involves the interests of all alike. Accordingly in pleading the one division of the case I shall employ the language of proof, in the other that of entreaty : in the former I must enlist your attention, in the latter I must throw myself upon your protection. Without your assistance and that of your honourable court no man can possibly withstand the force of prejudice. For myself, I am at a loss where to look. Shall I deny the fact of the bribery scandal? Shall I deny that it has been the subject of discussion in public meetings, of debate in the law-courts, of serious mention in the senate? Shall I seek to wrest from men's minds an impression that is so strong, so deeply engrained, of so long standing? That were beyond my ability. It is your protecting power, gentlemen, that must come to the rescue of my guiltless client in this disastrous scandal,

as though it were some destructive fire that might involve us all in a general conflagration.

Elsewhere it is truth that has too slight a basis to rest II. 5. on and too little strength to support it ; and similarly in this place a prejudice which is founded upon untruth ought to be of no avail. Prejudice may reign supreme in public meetings, but it should hang its head in courts of law. It may assert itself in the sayings and imaginings of uninstructed persons, but it should be put far from the understandings of intelligent men. The suddenness of its outbreaks may create an impression, but when time has intervened and the merits of the case have become known it should lose all its force. In a word, we should retain the definition of judicial equity handed down to us by our forefathers, according to which in courts of justice guilt is punished though there be no prejudice, and prejudice if there be no guilt is set aside. And this is why 6. I have certain requests to make of you, gentlemen, before proceeding to speak to the facts of the case. In the first place, I must ask you, as is only reasonable, not to bring any preconceived notions into this court ; for we shall forfeit not the moral weight only, but even the very name of jurors if, instead of giving judgment here in accordance with the merits of each case, we bring down with us from our homes judgments already formed. Secondly, if you find that reason uproots, that words weaken, or else that truth wrests from you any impression you may have already formed, I beg that you will not resist, but will dismiss it from your minds, willingly or at least without reluctance. Next, when I am speaking in disproof of each several charge, do not on your part call up before your minds in silent thought considerations which may

run counter to what I say, but wait for the end, and allow me to observe my own order of treatment. When I have finished, then, and not till then, mentally demand that any real omission I may have made shall be supplied.

III. 7. I am well aware, gentlemen, that I am taking in hand a case which now for eight years on end you have heard stated by the other side, and which the silent consent of society has well-nigh disposed of in a way adverse to my client. But if only some Providence will gain for me an indulgent hearing at your hands, I am sure I shall make you realise that, while nothing is so much to be dreaded as popular prejudice, a guiltless person who has incurred such prejudice can wish for no greater boon than a fair trial, because here at last and here alone can he find an end and issue of unfounded obloquy. I confidently anticipate that if I succeed in setting forth my case and in overtaking the whole subject in my argument, this very court wherein you sit assembled, instead of being, as his enemies expected, full of fear and terror for Aulus Cluentius, will prove at last a haven of refuge for the tempest-tost bark of his pitiable fortunes.

8. There is much that I might say, before speaking to the facts of the case, concerning the dangers to which we all are liable from popular prejudice. But I am unwilling to keep you longer in the uncertainty of expectation by such remarks, and I shall address myself to the indictment; only begging you, gentlemen, as I feel I shall have to do more than once, to listen to me just as if my case were being argued now for the first time, as in fact it is, not as if it had often been argued before and never successfully. It is only to-day that we have for the first time accorded to us an opportunity of disposing of

the charge on its merits ; up till now misrepresentation and prejudice have been rampant. While therefore I make a succinct and clear reply to an impeachment which covers a number of years, I beg you, gentlemen, to continue to favour me with a courteous and attentive hearing.

It is alleged that Aulus Cluentius bribed a panel of IV. 9. jurors in order to procure the conviction of Statius Albius, an innocent man, but one with whom he was on bad terms. Gentlemen, since this charge of compassing the ruin of an innocent man by bribery has been the main-spring of the virulence and prejudice of which I have spoken, I shall show, in the first place, that no one was ever brought to trial on more heinous charges supported by a greater weight of evidence. Secondly, I shall show that the very jurors who found the accused guilty had brought in previous verdicts compromising him in such a way as altogether to preclude the possibility of his being acquitted, I do not say by themselves, but even by any other bench of jurymen. This done, I shall next go on to prove the point which I am aware is above all demanded of me, namely, that the tribunal was tampered with, not on the side of Cluentius, but against Cluentius ; and I shall put you in a position to discriminate throughout the case between the actual facts, the figments of misrepresentation, and the fabrications of prejudice.

First in order, then, let me take the fact that when 10. Cluentius entered the lists as prosecutor he rested his case on very definite charges and quite irrefragable evidence—a fact from which it may be seen that he had good ground for feeling confident of the issue. At this point, gentlemen, I must endeavour briefly to set before you the charges on which Albius was condemned, and I

ask you, Oppianicus, to believe that this reference to your father's trial is not of my seeking: considerations of honour and duty to the defendant compel me to make it. If I am not able to meet your views on the present occasion, I shall have many opportunities of doing so in the future; but as for Cluentius, if I fail to do my duty by him now, I shall never have the chance again. And surely no one need hesitate to speak against a condemned man now in his grave on behalf of one unattainted and still alive. In the one case the sentence of guilty has already put quite beyond the reach of dishonour the person against whom such language is directed, while death has also eliminated the possibility of annoyance: whereas he on whose behalf we are speaking cannot sustain any reverse without feelings of bitter vexation and sorrow, and without the gravest

11. personal discredit and degradation. And to let you see that it was not the spirit of litigiousness that prompted Cluentius to impeach Oppianicus, or any mere brag-gadocio and vainglory, but unspeakable grievances, ceaseless intrigues, and the fear of death staring him in the face, I shall go a little farther back for the commencement of my proof; and I entreat you, gentlemen, not to take this amiss, for a knowledge of what happened at the outset will enable you much more readily to understand the ultimate issue.

V.— There was one Aulus Cluentius Habitus, gentlemen, the father of my client here, who for moral worth, high character, and noble birth, was by far the most distinguished man not only in the township of Larinum to which he belonged, but also in the surrounding neighbourhood. He died in the consulship of Sulla and

Pompeius, leaving behind him the defendant, a boy of fifteen, as well as a grown-up daughter of marriageable age, who within a short time of her father's death was wedded to her first cousin, Aulus Aurius Melinus. This young man was second to none in his own community, as opinion then went, in point alike of reputation and of rank ; and the union thus formed subsisted in all esteem **12.** and harmony till suddenly there sprang up on the part of an unnatural woman an abominable passion, involving sin as well as dishonour. Sassia, the mother of Habitus here—for mother she shall be called by me throughout the case, though she harbours against my client the ruthless animosity of an enemy ; she shall be called, I repeat, by the name of mother, nor shall she ever forfeit in the narrative of her inhuman wickedness the title which is hers by natural right. In proportion as the name of mother is in itself full of love and tenderness, the stronger will be the aversion with which you will view the unexampled criminality of a mother who has been now for many years desiring the death of her son, and who desires it at this moment more than ever. Well then, this mother of Habitus, having conceived an unholy love for her young son-in-law Melinus, at first, though not indeed for long, kept her desires in check as best she could ; but presently she became feverishly infatuated, and allowed herself to be carried beyond all bounds in the heat of her passion. Nothing could wean her from her attachment,—no considerations of modesty or of her own honour, no instinct of natural affection, no regard for the stain upon the family name or for the talk of society, no thought of her son's indignation or her daughter's sorrow. The young man, whose mind was **13.**

not yet fortified with wisdom and understanding, she worked upon by all the arts with which it is possible to ensnare and captivate those of his years. Her daughter felt the anguish and indignation which every woman would feel at such affronting conduct on the part of a husband, and moreover could not tolerate the monstrosity of her mother being her husband's mistress,—of which she thought she could not even complain without sinning. And so, while anxious that the world in general should remain in ignorance of her cruel wrong, she pined away in sorrow and tears, clasped in the arms of this most 14. loving brother. But suddenly there came a divorce, which seemed as if it would heal all her troubles: Cluentia separates from Melinus, sorry to leave her husband, but glad to see the end of her foul wrongs. Thereupon that exemplary paragon of a mother began openly to exult for joy. Her victory filled her heart with joy: she had conquered her daughter, but not her evil passion. Unwilling that vague suspicions should any longer sully her fair fame, she bids them deck and lay out for her, in the selfsame house from which her daughter had been so rudely thrust forth, the very nuptial couch which two years before she had herself bedecked for that daughter's marriage. The mother-in-law weds the son-in-law, with no auspicious rites, with no one to sanction the union, amid universal forebodings of ill.

VI. 15. What incredible wickedness was there in this woman, wickedness with this one exception unheard of in all experience! What unbridled and ungovernable appetite! What unparalleled effrontery! She may not have feared God's vengeance or what the world would say: but did she not dread the nuptial night and the glare of the

bridal torches? Did she not shrink in horror from the threshold of the bed-chamber, and her daughter's bed, and the very walls that had witnessed the former nuptials? Nay, in her mad passion she broke through and bore down every barrier; modesty was vanquished by appetite, fear by shamelessness, and reason by infatuation. Sorely did her son take this disgrace to 16. heart, affecting as it did both his family, his kindred, and his own good name; and his vexation was aggravated by his sister's daily lamentations and ceaseless weeping. But even in the face of such outrageous and sinful conduct on the part of his mother, he made up his mind to do nothing more than merely refrain from all intercourse with her, lest such intercourse should lead people to infer that he not only viewed with complacency but even deliberately approved of what he could really not bear to look on without the most heart-felt anguish.

So much for the circumstances in which the enmity 17. between the defendant and his mother had its origin: when you come to be familiar with the sequel, you will see what a real bearing on the case these circumstances have. It does not escape me, indeed, that at the trial of a son one should be slow to speak of a mother's infamy, no matter how depraved that mother may be. I should be unfit, gentlemen, to undertake any case if I failed—retained as I am for the defence of human beings imperilled by actions at law—to appreciate a principle which has its roots deep in the feelings common to humanity and in the order of Nature herself. I am well aware that men should keep silence concerning outrageous conduct on the part of parents—ay, and should even endure it with resignation; but I am also of opinion that we should endure only where

18. possible, and only where possible hold our peace. Aulus Cluentius has never in all his days seen any adversity, has never been put in peril of his life, has never feared any form of ill, except where his mother was at the bottom of the whole business. Yet on this occasion he would say nothing at all about his wrongs, allowing the veil of reticence, if not of oblivion, to cover them, did not the issues of this case make it quite impossible for him to be altogether silent on the subject. Why, this very trial, this action, with all the crowd of witnesses that is to be brought forward, was originally set on foot by his mother, and by his mother is at this moment being organised and equipped to the full extent of her wealth and resources. To crown all, she has lately in person swooped down on Rome from Larinum to secure the ruin of her son. She is at hand --this shameless, wealthy, relentless woman. She directs the prosecution and marshals the evidence. She exults in the defendant's unkempt appearance, and in the garb of mourning that he wears. She longs for his overthrow, eager to shed every drop of her blood if only she can see his shed first. If you do not in the course of the trial plainly perceive all this, you will be free to believe that I am wantonly attacking her; but if her enormities are clearly proved, you will have to pardon Cluentius for allowing me to speak as I am doing, as you would have to refuse to pardon me if I were to hold my peace.

VII. 19. I shall now proceed briefly to set forth the charges on which Oppianicus was condemned: this will enable you to understand the resolute character of Aulus Cluentius as well as the motive of the prosecution. And first I shall point out the ground of the accusation, in order to prove to you that it was stern necessity that compelled

my client to act as he did. When he had plainly 20. detected the poison which Oppianicus, his mother's husband, had prepared for him, and the matter was not one of surmise but of plain and palpable proof,—when in fact there could not be the shadow of a doubt as to the justice of his case,—he impeached Oppianicus. Of his resolution and energy I shall afterwards speak; all I wish you to know at present is that the only motive my client had for the impeachment was the wish once for all to escape in this way—the only way open to him—the danger with which his life was threatened and the daily intrigues against his very existence. And to show you that the charges on which Oppianicus was impeached were such as to give the accused as little ground for hope as his accuser had for fear, I shall set before you a few of the counts in the indictment on the occasion of the trial. When you hear them no one of your number will wonder that the defendant mistrusted his prospects and had recourse to Staienus and bribery.

A certain lady of Larinum called Dinaea, the mother- 21. in-law of Oppianicus, had three sons, Marcus Aurius, Numerius Aurius, and Gnaeus Magius, and a daughter, Magia, married to Oppianicus. Marcus Aurius, when quite a young man, was taken prisoner at Asculum in the Social War, and fell into the hands of the senator Quintus Sergius (the same who was found guilty of assassination), by whom he was confined in a slaves' prison. Marcus Aurius, on the other hand, died, leaving his brother Gnaeus Magius his heir; afterwards Magia died, the wife of Oppianicus; and last of all Gnaeus Magius, the only remaining son of Dinaea, died also. He left his property to young Oppianicus there, with a

direction to share with his mother Dinaea. Meanwhile information reached Dinaea from a known and trustworthy source that her son Marcus Aurius was still alive, a slave in

22. the Gallic country. The bereaved mother, now that the hope of recovering one child was held out to her, called together all her own kinsfolk and her son's intimate friends, and besought them with tears to undertake the charge of tracing the young man, and so restoring to her the son whom fate had seen fit to leave the one poor survivor of a numerous family. No sooner, however, had she begun to move in the matter than she was overtaken by

About £3400. illness; and so she made her will, leaving a legacy of four hundred thousand sesterces to her absent son, and in turn appointing as her heir the plaintiff Oppianicus, her grandson. A few days afterwards she died. But her kinsmen all the same, as had been arranged while she was still alive, set out after her death for the Gallic country in search of Marcus Aurius, taking along with them the person who had brought the news.

VIII. 23. Meanwhile Oppianicus, being, as you will learn in many ways, a man of matchless wickedness and effrontery, first bribed the informant by the agency of a Gallic friend of his own, and then procured at no great expense the removal by assassination of Marcus Aurius himself. Thereupon those who had gone to trace and recover their kinsman despatched a letter to the Aurii at Larinum, their own as well as the young man's relatives, saying that they found it difficult to conduct the search because the informant had to their knowledge been bribed by Oppianicus. This letter Aulus Aurius, a brave and energetic man, of high local standing, and a very near relative of the missing Marcus Aurius, reads publicly to

a large audience in the forum, Oppianicus being present ; and loudly proclaims his intention of impeaching the latter if he should find that Marcus Aurius had been murdered. Meanwhile those who had gone to the Gallic ^{24.} country return shortly afterwards to Larinum with the report that Marcus Aurius had been put to death. The inhabitants to a man, not his relatives alone, are roused to feelings of hatred for Oppianicus and pity for the unfortunate youth. So when the same Aurius who had previously given notice of his intention to prosecute began to press the fellow with loud threatenings, he fled in haste from Larinum and betook himself to the camp of the illustrious Quintus Metellus ; and after his flight, ^{25.} which bore witness at once to his guilt and to his guilty conscience, he never dared to trust himself among his enemies unarmed. In the reign of terror which marked Sulla's triumph he swooped down on Larinum with a band of armed men, to the utmost consternation of the populace. There he made away with the Council of Four elected by the townsmen, declaring that Sulla had appointed him with three others, and had at the same time instructed him to procure the outlawry and death of the Aulus Aurius who had threatened to impeach him on a capital charge, of the other Aulus Aurius, together with his son Lucius, and of Sextus Vibius, whose agency he was reported to have employed in bribing the man who had brought the information to Dinaea. They were accordingly executed in most ruthless fashion, and in this way he kept the rest of the citizens in no small terror of proscription and death. These facts were brought to light on the occasion of his trial ; and how can any one imagine that he could possibly have been acquitted ?

IX. But all this is of small account. Hear what is still to come, and you will wonder, not that Oppianicus was at last found guilty, but that he was for any length of time allowed to go free.

26. Notice, to begin with, the fellow's effrontery. He set his heart on taking to wife Sassia, the mother of Habitus —the very woman whose husband, Aulus Aurius, he had murdered. It were hard to say which is worse,—his indecency in making the proposal, or her unnatural conduct in the event of her accepting him. But just observe the fine sympathies and resolute spirit each 27. displayed. Oppianicus asks Sassia to marry him: he earnestly solicits her hand. She on her part shows no surprise at his effrontery, no loathing for his shamelessness—nay, she does not recoil in horror from his home, deluged as it was with her husband's blood: it was “because he had three sons” that she felt disinclined, she said, for the match. Having set his heart on Sassia's money, Oppianicus saw that he would have to go to his own home for a method of removing the obstacle which stood in the way of his nuptials. He had an infant son by Novia, and the second was being brought up beside his mother, Papia, at Teanum, a town eighteen miles distant from Larinum. Suddenly and without assigning any reason, he sends for the boy from Teanum, a thing he had not formerly been wont to do except on the occasion of games or other holidays; and his poor mother lets him go without a thought of harm. Oppianicus then pretended that he was off to Tarentum; and on that selfsame day the boy, after being seen in the streets in good health at five o'clock, died before nightfall, and next morning, before the dawn had time to

break, his dead body was reduced to ashes. The news 28. of this great sorrow reached his mother from general report before she was told of it by any member of the household of Oppianicus ; and she, on hearing in one breath that she had been robbed not only of her boy but even of the privilege of paying the last honours to his remains, came right off to Larinum more dead than alive, and there performed over again the obsequies of her already buried child. Before ten days had passed the other boy, the infant, is put to death ; whereupon Sassia forthwith marries Oppianicus, altogether jubilant over the happy fulfilment of her expectations. Nor can one wonder at her, since she saw that by way of marriage-gifts children had been murdered to win her favour. Most men are prone to covet riches for the sake of their children, but it was this man's pleasure to cast away his children for the sake of riches.

Gentlemen, I can see that you, as men of feeling, are x. 29. greatly discomposed by even the brief recital of those monstrous crimes. But what do you think must have been the sensations of those who had not only to listen to the narrative but also to bring in a verdict ? You are hearing the story of one on whom you are not sitting in judgment, of one whom your eyes do not behold, of one who is now beyond the reach of your aversion, of one who has paid his debt to nature and to the law—whom the law punished with exile and nature with death ; and you are hearing it from the lips of one who was no personal enemy of his, who is not producing witnesses, and who is briefly and cursorily mentioning facts which might be stated at the greatest length. But his judges heard the story of one concerning whom they were bound to

bring in a verdict on oath, who was in court, and whose execrable crime-stained face they had to look on, whom they all had come to detest for his effrontery, whom they thought deserving of the severest punishment ; and they heard it from the lips of his accusers, they heard the depositions of a number of witnesses, they heard the long and telling speech of the eloquent Publius Cannutius, in which each individual point was dealt 30. with in detail. Is it possible, I ask, for any one in possession of the facts to harbour a suspicion that Oppianicus was an innocent man, whose ruin was treacherously compassed by a judicial process ?

The other averments may now be summarily put before you, gentlemen : I shall then proceed to deal with matters which more nearly affect and are more intimately bound up with the defendant's case. You will bear in mind, I beg, that it is not my object to inveigh against the deceased Oppianicus. No : but as I wish to convince you that it was not my client who bribed the court, I desire to take as the primary and fundamental principle of the defence the fact that the Oppianicus who was found guilty was a villain and a scoundrel of the deepest dye. With his own hands he administered a poisonous draught to his wife Cluentia, the aunt of Habitus here by the father's side. Even in the act of drinking it his victim suddenly cried out aloud, "I am dying in fearful agony." No sooner had she said this than she breathed her last : these words, that ejaculation, were still on her lips when she expired. And on the occurrence of this sudden death with that dying cry, all the usual marks and tokens of poisoning were also found on her dead body.

By poison likewise he made away with his brother XI. 31. Gaius. And as if this were not enough,—though one would think that in the murder of a brother every form of blood-guiltiness was comprised,—he first paved for himself by other enormities a way of leading up to this execrable crime. His sister-in-law, Auria, was pregnant, and her confinement was believed to be near at hand; so he caused her death by poison, killing at the same time the child with which she was about to present his brother. After this he commenced operations against the brother himself; and Gaius, when he had already drained the deathful cup, and was calling out all too late upon his own and his wife's death, and desiring to alter his will, dropped down dead even while giving expression to his intention. ⁷The woman he murdered that her issue might not debar him from succeeding to his brother's estate, while he robbed that brother's offspring of life before it could take in the kindly light of day; thus giving all to know that nothing could be barred to one from whose effrontery not even the protection of its mother's womb had availed to keep a brother's offspring, and nothing could be holy in such eyes as his. I re- 32. member that when I was in Asia a woman of Miletus was sentenced to death for having drugged herself to procure abortion, in consideration of a bribe received from certain heirs-in-default. Hers was a righteous sentence: she had destroyed the hopes of a parent, the continuity of a name, the support of a family, the heir of a house, and the citizen-elect of a state. How much more severely ought the same crime to be punished in Oppianicus! She did violence to her own person—it was herself she tortured; but he achieved the same end

through the death and torture of another. As a rule, it would not seem possible to commit several murders on one victim: it has been left for Oppianicus to kill more than one in the person of a single individual.

XII. 33. Gnaeus Magius, the uncle of young Oppianicus there, had come to know of the shameless daring which had now become a second nature with the man. So being attacked by a serious illness, and wishing to leave his property to his sister's son, he summoned his friends and asked his wife, in the presence of his mother Dinaea, if she were with child. On her replying in the affirmative, he requested her after his death to live until her confinement with Dinaea (at that time her mother-in-law), and to take every precaution to preserve and bring safely to the birth the child she had conceived. He then left her in his will a large legacy, to be paid by his posthumous issue, if any, but made no provision for any bequest if the estate should revert to the heir-in-default.

34. You see how he suspected Oppianicus: his estimate of him is obvious enough. Though he was making the son his heir, he would not appoint the father guardian to his offspring. Now listen to what Oppianicus did, and you will see that the range of Magius's mental vision, on his deathbed, did not reach far into the future. The money that had been bequeathed to the woman through the heir (if she should have a son) he pays down to her in advance and before it was due—if indeed the transaction should be called the payment of a legacy rather than the price of abortion; and she on receipt of the bribe, together with many other presents which were quoted from the account-books of Oppianicus at his trial, yielded to avarice, and sold to that villain the

promise she bore within her bosom, committed as it had been by her husband to her care and keeping. One 35. would think that nothing further could be added to such depravity, but mark the issue. The very woman who, according to her husband's solemn request, should not so much as have known any house except her mother-in-law's for the next ten months, actually married Oppianicus five months after her husband's death. But their union was not a lasting one: it was held together not by the honourable bond of wedlock, but by companionship in crime.

¶ Take again the murder of Asuvius, a rich young man XIII. 36. of Larinum: was anything more notorious while the facts were still fresh, or a more common subject of general conversation? There was at Larinum an abandoned and most necessitous scoundrel named Avillius, a person gifted with a kind of talent that enabled him to work upon the passions of younger men. By fawning and flattery he had wormed his way into the confidence of Asuvius; and Oppianicus began forthwith to entertain the hope that he could bring this Avillius to bear, like some siege-engine, on Asuvius, take the young man captive, and carry his patrimony by storm. The plan was devised at Larinum, but its execution was transferred to Rome; for they thought that, while they could more easily plot together in retirement, it would be more convenient to carry out such a design in a crowded city. Asuvius went to Rome in company with Avillius, and Oppianicus followed closely at their heels. It would be tedious, especially as I must hasten on to other points, to tell you of the life they led when they got to Rome, of their revels,

of their shameful excesses, of their profuse and lavish expenditure; Oppianicus being not only privy to their conduct but even acting as their boon-companion and abetting them in their evil courses. But mark the

37. issue of this counterfeit friendship. Once when the young man was with a mistress, passing the night at her house and lingering on next day, Avillius (according to arrangement made) pretends that he is taken ill and wants to make his will. Oppianicus brings witnesses to him to seal it, persons who did not know either Asuvius or Avillius, and calls him Asuvius; and after the will has been sealed up in the name of Asuvius, the witnesses take their departure. Avillius for his part gets well at once; but within a short time of the transaction Asuvius is inveigled into some sand-pits outside the Esquiline gate, on pretence of a visit to the grounds of a

38. country house, and is there assassinated. 9 For a day or two he was missed, and could not be found in the haunts where he was usually looked for; and Oppianicus kept saying in the forum of Larinum that he and his friends had lately witnessed the sealing of his will. Thereupon, acting on the known fact that, on the day on which their master had last been seen, Avillius had been with him and had been noticed by several persons, the freedmen of Asuvius and a few friends lay hold on the rascal and bring him before the tribunal of Quintus Manlius, who was at that time one of the three Commissioners of Police. There, although there was no witness nor any one to lay information against him, terrified by a guilty sense of his late misdeed, he at once sets forth the whole story as I have just been telling it, and confesses that it was he himself who, at the instigation of Oppianicus, put

Asuvius to death. By warrant of Manlius, Oppianicus 39. is dragged forth from the home where he was in hiding, and is confronted with Avillius, now turned king's evidence. Need you ask the sequel? Most of you knew Manlius, a man who from boyhood had never had a thought of distinction, of virtuous endeavour, or of the advantages that go along with a good name. At first a wanton and reprobate man about town, he had been raised by the votes of the people, in those days of his country's troubles, to a seat on the bench near the pillory to which he had often been dragged amid the revilings of a mob. So he strikes a bargain with Oppianicus, accepts a bribe from him, and turns his back on the clear case he had begun to hear. And at the trial of Oppianicus this charge in the matter of Asuvius was clearly proved by the evidence of many witnesses, as well as by the information of Avillius, which was held to implicate Oppianicus as the prime offender—Oppianicus, the poor innocent, whose ruin, you say, was compassed by a sham trial! [

Again, is it not a patent fact that your father, Oppianicus, murdered your grandmother Dinaea, whose heir you are? He brought to her that doctor of his who had already more than once given proof of his conquering skill; but the lady cried out that she would on no account be attended by one "whose attentions had lost her all her children." On this he at once approaches Lucius Clodius, an itinerant quack from Ancona, who chanced to have come to Larinum at the time, and bargains with him, as was shown from his own account-books at the trial, for the sum of two thousand sesterces. About £1, Clodius, being in a hurry, and having many fairs still to visit, did the business as soon as he was called in. By

the first draught he gave her he made away with the woman, and then took his departure from Larinum without a single instant's delay. Likewise when Dinaea was making her will, Oppianicus, as having been her son-in-law, got the tablets into his hands and ran his finger through some bequests she was making ; and having done so more than once, to prevent the erasures from betraying him, he copied out the will on other tablets after her death and sealed it with forged seals.

I pass over many points deliberately, for I fear you may think I have already said too much ; you must, however, take the view that at the other periods of his life as well he remained true to his real character. The town council of Larinum came to a unanimous decision that he had tampered with the official register of the censors there. No one would now have any pecuniary transactions with him, or indeed any dealings whatever ; no one of his numerous kinsmen and connections ever appointed him guardian to his children ; no one thought him a proper person to visit, to meet, to converse with, or to invite to table. All turned from him with contempt and loathing ; all fled his presence as they would 42. some savage monster or some baneful pestilence. And yet, gentlemen, for all his effrontery, for all his enormities, for all his sins, Habitus would never have impeached him if he could have refrained from doing so with safety to himself. Oppianicus, though unfriendly to him, was at the same time his stepfather ; and his mother, with all her ruthless animosity, was his mother still. Lastly, no one could possibly be more disinclined to undertake an impeachment than was Cluentius, by nature, by inclination, and by the way of life he had adopted ;

but when he had to face the alternative of either taking up the prosecution in a rightful cause and with a clear conscience, or of dying an undeserved death before his time, he elected to make the best of it and prosecute, rather than lose his life in such a way.

To convince you of the truth of what I say, I shall 43. set before you a crime in which Oppianicus was clearly detected and exposed. It will prove both points to you at once,—that if my client could not help taking up the prosecution, no more could the defendant help being condemned.

There were at Larinum certain official ministers of xv. Mars called Martiales, men consecrated to the service of that deity by the immemorial religious ordinances of the inhabitants. Of these there was a considerable number; and just as in Sicily there is a large body of "servants of Venus," so they of Larinum were in like manner accounted of the household of Mars. Well, Oppianicus suddenly began to set up a plea that they were all freemen and Roman citizens. His conduct gave great offence to the town council of Larinum and to the whole body of the townspeople, and they accordingly requested Habitus to undertake the defence of the case in the name of the corporation. Habitus had kept himself apart from all affairs of this sort; but out of regard for his high standing and ancient lineage, and feeling as he did that he lived not for his own interests alone, but also for those of his fellow-townsman and the general circle of his friends, he did not like to decline so pressing an invitation, coming as it did from the whole community of Larinum. So he undertook the case and 44. carried it to Rome, where sharp skirmishes between himself

and Oppianicus were of daily occurrence, each being eager to win. His opponent was naturally a man of brutal and morose temper, whose infatuated spirit was still further inflamed by the unconcealed antipathy which his mother felt towards her son Habitus ; and the pair thought that their interests absolutely required that my client should be detached from the case of the Martiales. There was at bottom also another and a stronger motive, which had more weight than anything else with the insatiable **45. Oppianicus.** Unable to decide either to make any bequest to such a mother as his was, or altogether to omit in his will the name of her who gave him birth, Habitus had, up to the time of this trial, never made any sort of will. Knowing this—and indeed it was no secret—Oppianicus foresaw that on my client's decease his whole property would revert to his mother, whom he might afterwards, he thought, put to death, when the addition to her wealth would have enhanced the profit, while the loss of her son would have lessened the danger. Listen now to the story of how, inflamed by these considerations, he sought by poison to take the life of Habitus.

46. There were two twin-brothers of the township of Alatrium, Gaius and Lucius Fabricius by name, who, while resembling each other both in outward appearance and in character, formed the strongest contrast to their fellow-townsmen ; for the latter are, I may say, invariably distinguished by shining merit and by the almost universal consistency and orderliness of their manner of life, as I suppose you are all aware. With these Fabricii Oppianicus had always been on terms of the greatest intimacy. Now you all know, I take it, that similarity of tastes and disposition constitutes a powerful factor in

the formation of friendships. These persons lived as those who thought no form of money-making disreputable. With them originated every sort of knavery, and all kinds of intrigues for the entanglement of young men ; and their universal notoriety for vice and depravity had induced Oppianicus, as I have said, many years before, eagerly to court their friendship. On this occasion, therefore, he ^{47.} determined to employ the agency of Gaius Fabricius, Lucius being dead, in getting up a plot against Habitus. The latter, who was at the time in bad health, was being attended by Cleopantus, a physician of no mean standing, and personally a man of repute ; and his slave, Diogenes, Fabricius began to solicit by promises and bribes to administer poison to Habitus. The slave, who was not devoid of shrewdness, and, as the event proved, honest and upright, did not refuse to listen to what Fabricius had to say ; but at the same time he reported the matter to his master, who again talked to Habitus about it. Habitus immediately turned it over with the senator Marcus Baebius, a very intimate friend of his ; and I do not suppose you have forgotten the loyalty, forethought, and devotion he displayed. His advice was that Habitus should buy Diogenes from Cleopantus, in order that the charge might either more readily be brought home on his information, or else be ascertained to be false. To make a long story short, Diogenes changes hands ; the poison is got ready in a few days ; and, in the presence of many reputable men who had privately come upon the scene, a sealed packet, containing the money consideration that was being offered for the deed, is found on the person of Scamander, a freedman of the Fabricii.

VII. 48. Who, in Heaven's name, that knows these facts will say that Oppianicus was judicially murdered? Was ever man brought to trial more brazen, more criminal, more evidently guilty? Could any abilities, any gift of oratory, any defence, no matter by whom elaborated, have withstood this single accusation? Again, is there a man who fails to see that, when the plot had been discovered and openly exposed, Cluentius had to make his choice between death and an impeachment?

49. Gentlemen, I imagine I have given adequate proof that the charges on which Oppianicus was impeached were of such a nature as altogether to preclude the possibility of an honourable acquittal. I must now make you understand that, in appearing at the bar on his defence, he came before the court a condemned man, as the case had already been decided not once, but more than once before. For Cluentius began by impeaching the man in whose hands he had found the poison—Scamander, the freedman of the Fabricii. The bench was unprejudiced; there was no suspicion of bribery; the court had before it a straightforward issue, an established fact, a single accusation. Hereupon the Gaius Fabricius of whom I have spoken above, seeing that the conviction of his freedman would place him in imminent danger, brought a large deputation of the citizens of Alatrium to my house. He knew that I was their near neighbour, and on terms of great intimacy with many of them. Now these gentlemen held the inevitable view of the character of Fabricius; but he was their fellow-townsman, and they thought it concerned their own credit to adopt all possible measures for his defence. So they asked me to stand by him and take in hand the

case of Scamander, which involved the whole question of his patron's liability. Not being able to refuse any request to those estimable men, who had such a regard for me, and not having any idea, any more than they themselves had when they sought to put the case in my hands, that the charge alleged was so heinous and so well authenticated, I engaged to meet their wishes in every way. 50.

The trial began, and Scamander was put in the dock. XVIII. The counsel for the prosecution was Publius Cannutius, a man of outstanding ability and a most accomplished pleader ; but he limited his impeachment of Scamander to the three words, "Poison was discovered." It was against Oppianicus that the whole artillery of the prosecution was directed. His motive for the plot was disclosed, reference was made to his intimacy with the Fabricii, his life and character were shown up ; and then, to crown all, the whole indictment, after an exhaustive and telling statement, was finished off with the story of the poisoner taken red-handed. Thereupon I rose to 51. reply—and Heaven will bear witness to my anxiety, my perturbation, and my fears ! I am, indeed, always very nervous when I begin to speak. I never rise without feeling that not only my ability, but my character also and my honour are being put to the test ; and my fear is that I may be thought so shameless as to profess what I cannot perform, or else so disloyal or so indifferent as not to do the best I can. But on this occasion I was in such trepidation that I dreaded every contingency alike. If I said nothing, I was afraid I might be thought to have no gift of speech at all, or else to have no sense of shame, if I spoke at length in so desperate a case.

At last I pulled myself together, and made up my XIX.

mind that there was nothing for it but to take a bold course. I reflected that it is generally held to be a praiseworthy thing in young pleaders like me not to refuse to stand by a man in an emergency, even though his case might not be very strong. And so I struck out boldly. I gave battle, I exerted myself in every possible way. I had recourse, to the very best of my ability, to all the shifts and dodges of the courts, in such vigorous form that, though I say so with diffidence, I succeeded in making it impossible for any one to think that the advocate had failed to do the best he could for his case. But as fast as I laid hold of any point, the prosecutor
52. wrested it from my grasp. Did I ask if there had been any bad blood between Scamander and Habitus? He admitted there had been none, but said that Oppianicus, whose agent Scamander was, had always been, and still was, on very bad terms with my client. Did I essay to show that the death of Habitus would have brought no advantage to Scamander? He conceded the point, but said that his whole property would then have reverted to the wife of Oppianicus, a man who had shown himself quite an adept at wife-murder. When I availed myself of the plea which has always been considered as redounding greatly to their credit when freedmen are on trial,—that Scamander bore a good character with his master,—he allowed it, but asked in whose eyes that master
53. himself bore such a character. When I dwelt at considerable length on the argument that Scamander had been entrapped by Diogenes, and that their appointment had referred to something quite different, viz. that Diogenes was to bring physic, not poison—adding that this was what might happen to any one—he asked why

Scamander had gone alone to such a retired spot, and why he brought money sealed up in a packet. In fact, at this point my case broke down under the weight of evidence given by men of the highest character. Marcus Baebius deposed that it was by his advice that Diogenes was purchased, and that he was present when Scamander was arrested with the poison and the money. Publius Quintilius Varus, a scrupulously conscientious person whose word carried the greatest weight, deposed that shortly after the fact Cleopantus had spoken to him about the plot that was being laid against Habitus, and about the overtures made to Diogenes. And though at 54. the trial I was pleading, to all appearance, on behalf of Scamander, while he was nominally the defendant, the person actually implicated and imperilled throughout the prosecution was Oppianicus. Of this he made no secret, and indeed it was impossible for him to disguise the fact. He appeared constantly in court, beat up his supporters, and employed every weapon of energy and interest. Lastly (and this damaged his case more than anything else), he actually sat here, on the benches reserved for the defence, as if he were himself on trial. The eyes of every juror were turned, not on Scamander, but on Oppianicus. His fear and trepidation, his restless and anxious expression, his frequent change of colour, made clear and unmistakable all that was previously matter of suspicion only.

When the time came for the jury to deliberate on XX. 55. their verdict, Gaius Junius, the President of the Court, asked the defendant, in accordance with the provisions of the Lex Cornelia, which was then in force, whether he wished the verdict to be taken openly or by ballot ; and he replied, on the advice of Oppianicus, who repre-

sented that Junius was on intimate terms with Habitus, that he wished for a ballot. The jury then proceeded to consider their verdict. By every vote, with one single exception—which Staienus acknowledged to be his—Scamander was found guilty, on the first hearing of the case. Was there a man among all then present in court who failed to see that the conviction of Scamander implied a verdict against Oppianicus? What was the point decided by his conviction, if it was not that the poison which had been procured was intended to be administered to Habitus? Further, did the faintest shadow of suspicion attach, or could it possibly have attached, to Scamander, to make people think that it was from private motives of his own that he had wanted to murder Habitus?

56. Notwithstanding the issue of this trial, by which Oppianicus stood morally condemned at the bar of public opinion, though not as yet by the formal verdict of a court of law, Habitus did not at once proceed to impeach him. He wished to find out whether juries deal rigorously with those only whom they have ascertained to have actually had poison in their possession, or whether they consider that the contrivers and abettors of such crimes also deserve to be punished. So he at once impeached Gaius Fabricius, whose intimacy with Oppianicus led him to think that he had been an accessory to the fact; and on account of the connection of this case with the previous one, the court granted his request that it should be placed first on the roll. At this conjuncture, so far was Gaius Fabricius from bringing my friends and neighbours of Alatrium to me, that he was not even able to secure their support or testimony
57. for himself. Ordinary kindness had, as we thought,

required us to undertake the defence of one with whom we had a certain connection, so long as his case, however doubtful it may have been, had not been compromised; but now that a verdict had been given, we thought it would be sheer effrontery on our part to seek to overturn the finding. [The consequence was that, in this defenceless and helpless condition, he found himself under the necessity of betaking himself, so desperate was his case, to the Caepasii, two hard-working brothers, who took as a compliment and a personal favour any opportunity of pleading that might be given them.]

It seems a most inequitable arrangement that, whereas XXI. in bodily diseases the more serious the ailment the greater is the distinction and ability looked for in the physician, in trials involving civil death the more serious the case is the more incompetent and undistinguished is the advocate employed. The reason may perhaps be that a doctor is not called on for anything except his skill, whereas a pleader must lend the weight of his moral influence as well. [The defendant is summoned into court, 58. and when Cannutius has stated the case for the prosecution in a few words, treating it as though the issue had already been decided, the elder Caepasius begins his reply with a lengthy and far-fetched introduction. At first his speech is listened to with attention. Oppianicus began to rouse himself from his despondency and dejection. Fabricius himself was in great glee: he failed to see that what arrested the attention of the jury was not the eloquence of the speaker but the effrontery of his defence. When he came to speak to the facts, he made the case even worse by gratuitously inflicting, as it were, fresh wounds, in such a way that,

though he was really doing his best, he seemed at times not to be defending, but to be playing into the hands of the prosecution. Flattering himself that he was making a very brilliant speech, he drew upon the secrets of his stock-in-trade for this most telling passage: "*Turn now, gentlemen, to the lot of man, turn to its uncertain and ever-shifting chances, turn to the old age of Gaius Fabricius;*" and after several times repeating this highly ornamental "*turn*" of his, he himself turned, and lo! Gaius Fabricius had slunk out of court with his head hanging down.

59. The bench began to laugh, whereupon the advocate's gorge rose. He was cross at having the case taken out of his hands, and at not being allowed to finish his brilliant "*Turn now, gentlemen*"; and he was within an ace of running after his client and dragging him back into court by the nape of the neck, so as to be able to go on with his peroration.

On this occasion, then, Fabricius was found guilty, first by the weighty testimony of his own conscience, and afterwards by the might of the law and the verdict of a jury.

XXII. Is it necessary to go on to speak of the character of Oppianicus and of his trial? He was impeached before the self-same court, after having already been condemned by these two previous decisions; and by the self-same court, which in condemning Fabricius and his accomplice had passed judgment also upon him, his case was placed first on the roll for trial. He was impeached on the gravest charges,—not only those which I have briefly stated, but many others besides which I pass over. Oppianicus was impeached, I repeat, before the jury which had condemned his agent Scamander, and Gaius

Fabricius who had been privy to his crime. Good 60.
heavens ! which is the more wonderful,—that he was con-
victed, or that he dared to enter an appearance at all ?
Why, what could these jurymen have done ? If in the
Fabricii they had condemned innocent men, they were
nevertheless bound, in trying Oppianicus, to be consist-
ent and to stand by their former verdicts. Juries are
wont, as a rule, to guard against differing even from the
decisions of others : and were these jurors of their own
act to rescind the decisions they themselves had come
to ? They had condemned the freedman of Fabricius
for having been the agent in the crime, and his master
for having been an accessory to it : were they now to
acquit the author and contriver of the villainy himself ?
Apart from any previous verdict, and in the light of the
bare facts of the case, they had convicted the other two :
were they now to discharge the man who had already
been twice convicted before he came to them ? This 61.
would verily have rendered the old senatorial monopoly
of our law-courts entirely indefensible. It would have
branded it, not with groundless odium, but with merited
and conspicuous disgrace ; it would have covered it with
shame and infamy. What reply, pray, could these jurors
have made had any one asked them on what charge they
had convicted Scamander ? " Why, on the charge," they
would say, " of having tried to poison Habitus by the
agency of his doctor's slave." " And what advantage
was Scamander to derive from the death of Habitus ? "
" None ; but then Oppianicus used him as a tool." " You
also condemned Fabricius ; why ? " " Well, he had been
on very intimate terms with Oppianicus, and his freed-
man, moreover, had been detected in the crime ; and so

we thought it unlikely that he had taken no part in the plot." Well then, if they had actually acquitted Oppianicus after having themselves condemned him twice over, who would have stood such shameful conduct in our courts of law, such inconsistency in the verdicts, such wanton caprice on the part of the jurors?]

62. [If, then, you see the point which has now been clearly made out by all that I have just been saying—namely, that the defendant in that action must inevitably have been found guilty, especially by the very jury which had brought in two previous verdicts—you cannot fail at the same time to see that it is inconceivable that the prosecutor can have had any motive for wishing to bribe the court,]

xxiii. I ask you, Titus Accius, abandoning now every other argument, whether you believe that Fabricius and his accomplice also were innocent of the charge on which they were found guilty, and whether your contention is that at their trials too the court was bribed, when in the one case the defendant was acquitted only by Staienus, while in the other he even went the length of passing judgment on himself? If, on the other hand, they were guilty, of what crime, pray, were they guilty? Was any other charge brought against them except that of procuring poison to take the life of Habitus? Was any other point discussed when they were on trial except this plot which Oppianicus laid against Habitus with the help of Fabricius? You will find there was no other, gentlemen—none. The facts are still within our recollection, and the official records are available. Confute me if I am saying what is not true. Read the depositions of the witnesses; point to anything that was urged against the defendants, I do not say as a direct charge, but even by way of an

aspersion, beyond this attempt at poisoning on the part of Oppianicus. Much could be said to show why it was 63. inevitable that the verdict should have gone against them, but I shall hasten to meet your expectations. For though you are listening to me with a degree of good-will and attentiveness, never, I can well imagine, accorded to any one before, still your unexpressed expectations have for some time past been summoning me on to another point. I seem to hear you interrupting me with the cry, "What! do you deny that some one bribed the bench at the trial of Oppianicus?" No, I do not; what I say is that it was not my client. "Who was it then?" I fancy that, first of all, even if the issue of the case had been uncertain, there would have been more likelihood that he had recourse to bribery who feared a sentence of guilty for himself, than he whose only anxiety was that his opponent might be acquitted. In the second place, since there was no room for doubting what the verdict must inevitably be, it is surely more likely that bribery was employed by the man who had no other resource to trust to, than by him who had every ground for confidence. Lastly, he surely was more probably the guilty party who had twice come off badly in that self-same court, than he who twice had made good his case there. There 64. is one point which I am sure no one, however ill-disposed to Cluentius, will refuse to admit. If it is agreed that the court was bribed, it must have been bribed either by Habitus or by Oppianicus. If I can show that it was not bribed by Habitus, I prove that it was bribed by Oppianicus; if I show that it was bribed by Oppianicus, then I clear my client. Accordingly, though I have given sufficient proof that Habitus had no motive for

bribing the jury, which of itself shows that Oppianicus was the culprit, I shall now ask your attention to a separate statement of the evidence against the latter.

XXIV. L I do not mean to dwell on the arguments, weighty as they are, that the guilty party must have been the man who was in danger of conviction, who feared the issue, who had no other hope of deliverance, and who was always noted for unparalleled effrontery. Considerations of this kind are not wanting; but since the matter

65. with which I am dealing is not doubtful, but clear and obvious, it would be superfluous to enumerate such considerations in detail. N I assert that a large sum of money was given by Statius Albius to Gaius Aelius Staienus, one of the panel of jurors, for the purpose of bribing the tribunal. Does any one deny it? I call on you, Oppianicus; on you, Titus Accius; for both of you—the one by his eloquence, the other in silent loyalty to his father's memory—are bemoaning the sentence passed on that occasion. Dare to deny that Oppianicus gave money to the juror Staienus; deny it, I repeat,—you have my leave to interpose a statement to the contrary. Why do you not speak? You are unable, are you not, to make such a statement with regard to a bribe of which you demanded restitution, which you admitted, which you wrested from him? How then, I ask, can you have the face to speak of bribery and corruption, when it was by your side, as you confess, that money was given to a juror before the

66. trial, and after the trial taken from him? B But how was all this managed? Gentlemen, I shall carry the thread of my narrative a little farther back, and make such a disclosure of the facts which have long lain hidden in obscurity that you shall imagine you are eye-witnesses of

what occurred. Have the goodness to listen to the sequel of my story with the same attention with which you have hitherto heard me. I assure you I shall say nothing that might be thought unbecoming the quietude of this assembly, nothing that might seem not to deserve from you an attentive and interested hearing.

No sooner did the impeachment of Scamander give Oppianicus a hint of his imminent danger than he immediately set himself to become intimate with Staienus, a needy and daring fellow, who was well versed in the art of bribing courts of law, and was, moreover, at this time himself a juror. By the favours he bestowed on this person he had made such headway that first of all at the trial of Scamander he received from him a more interested support than was consistent with the honour of a juryman. Afterwards, however, when Scamander had been acquitted 67. by one vote, that of Staienus, while Scamander's master had not even been able to acquit himself, he made up his mind that he would have to employ more drastic measures to ensure his deliverance. Thereupon he began to beg for assistance to his person and estate from Staienus, regarding him as a man of the shrewdest invention, of the most shameless daring, and of the greatest promptitude in execution; for Staienus really had a share of all these qualities, though not so great as he pretended 71.

Now you are all aware, gentlemen, that even brute XXV. beasts, obeying the promptings of hunger, like to go back to the spot where in time past they have had a meal. Two years previous to this, our friend Staienus, 68. having undertaken the case of Safinius Atella's estate, had said that with six hundred thousand sesterces he About £5100. would bribe the bench of jurors. He received this sum

from the ward, and kept it to himself, refusing to give it up after the trial was over, either to Safinius or to those who had purchased the estate. When he had spent all the money, and had left nothing even for the necessaries of life, not to mention the indulgence of his evil passions, he made up his mind that he would have to fall back on his old game of plunder and embezzlement in courts of justice. Seeing the now desperate position of Oppianicus, whom the two previous verdicts had left without a leg to stand on, he roused him from his despondency by the promises he made, and bade him withal never despair of deliverance. ~~Oppianicus~~, on his part, began to implore the rascal to point out to him some way of bribing the jury;

69. on which he told him, as Oppianicus afterwards informed us, that there was not a man in the country who could do it "except myself." But at first he began to make difficulties; he was standing for the aedileship, he said, against men of the highest rank, and he was afraid of incurring unpopularity and discredit. His scruples were subsequently overcome; and after beginning by demanding an immense sum of money, he came down in the end to a negotiable figure, and bade Oppianicus send to

About his house six hundred and forty thousand sesterces. As £5440. soon as this sum was brought to him, the dirty scoundrel began to indulge in thoughts and reflections of this sort: "Nothing could suit my interests better than that Oppianicus should be convicted. If he is acquitted, I shall either have to distribute this money among the jurors, or else give it back to him; whereas if he is found guilty

70. there will be no one to recover it." So he bethinks himself of a remarkable device. Gentlemen, you will more readily credit the true statement I am making if you will have

the goodness to go back a considerable space, and recall to mind the life and disposition of Gaius Staienus ; for it is just the opinion we have of the character of an individual that enables us to determine what his conduct may or may not have been.]

[Being necessitous and extravagant, audacious, cunning, and treacherous, and seeing such a large sum of money deposited in his wretched, poverty-stricken lodgings, he began to turn his mind to all sorts of roguery and fraud. “Shall I give it to the jurors? If I do, what shall I gain for myself save danger and disgrace? Can’t I hit on some way of making Oppianicus’s conviction inevitable? What if some accident (nothing in this world is impossible) should deliver him from danger: should I not have to give it up? Well, he is tottering on the brink, let us tip him over: he is done for, let us give him the finishing stroke.” The plan he took was to promise money to certain unprincipled jurors, and afterwards to keep it to himself; for he thought that the men of character among them would of their own accord deal rigorously with the case, and his object was to make those of less principle enraged with Oppianicus for having played them false. So, with his usual wrongheadedness and reversal of the proper order of things, he begins with Bulbus. Finding him in low spirits and inclined to yawn, because it was long since he had made any money, he gives him a playful poke: “I say, Bulbus,” says he, “will you stand in with me, so that you and I may not serve our country for naught?” As soon as he heard the words “not for naught,” Bulbus exclaims, “I’ll follow wherever you like to lead; but what’s your game?” Thereupon Staienus promises him forty thousand sesterces in the event of Oppianicus’s £340.

acquittal, and asks him to approach the others with whom he was in the habit of gossiping. He himself, the contriver and cooker-up of the whole scheme, goes on to sprinkle a drop of Gutta-seasoning on his vegetable friend Bulbus; after which Bulbus was not thought at all a bitter pill by those whose palates had been tickled by a titbit of promise from what he said to them.] One day passed, and then another, and the matter still seemed rather unsettled; there was no appearance of an intermediary agent, or security for the payment of the money. On this Bulbus, looking quite sprightly, accosts the fellow in his most insinuating manner: "Holloa, Paetus"—for this was the surname which Staienus had chosen for himself from the illustrious house of the Aelii, lest if he called himself a Ligur he might be thought to be using a tribal rather than a family surname—"Holloa, Paetus," says he, "about that business of which you spoke to me; they are asking me where the money is." Then did this unconscionable impostor, gorged with the gain he made in courts of justice, and already brooding in hope and imagination on the money which he had stowed away, begin to knit his brows. Call to mind his features and the unreal and hypocritical look he used to wear. He complains that Oppianicus has played him false! He, who was one huge piece of roguery and falsehood, and who by zealous application and a sort of knavish craft had given an additional flavour to the vices with which nature had endowed him, roundly asserts that Oppianicus has defrauded him, and says moreover, to prove it, that, in the open voting which was to be the order of the day, he would give his vote for a conviction!]

XVII. 73. [A rumour had spread on the bench that there had

been some talk of bribery among individual jurors ; for the matter had not been kept as secret as was desirable, while, on the other hand, it was not so notorious as on public grounds it deserved to be. Every one was in a state of mystification and uncertainty. The shrewd Cannutius had somehow got wind of the fact that Staienus had been bribed, but he thought that the transaction had not been completed ; and so he resolved of a sudden to get the marshal to make the announcement that the debate was closed. On this Oppianicus felt pretty confident, believing as he did that Staienus had completed his arrangements. The number of jurors ^{14.} about to deliberate on the verdict was thirty-two. Sixteen votes would ensure acquittal, and forty thousand ^{About £340.} sesterces apportioned to each individual juror ought to make up that number,—crowned as it would be with a seventeenth from Staienus himself in the hope of rewards still greater. But, as luck would have it, Staienus was not present in court when this sudden move was made ; he was defending some case or other before a civil commissioner. Habitus did not mind this in the least, no more did Cannutius ; but it was different with Oppianicus and his advocate, Lucius Quintcius. The latter being at the time a tribune of the plebs, protested in a bullying tone to Gaius Junius, the President of the Court, against allowing the jury to proceed to consider their verdict without Staienus ; and, thinking that the attendants were purposely remiss in the matter of summoning him, he himself left the criminal trial and went to the tribunal where Staienus was engaged in a civil suit, dissolved it in virtue of his tribunitian prerogative, and brought the absentee back with him into court.]

75. [The jury rise to retire, but not before Oppianicus had said, as in those days he was entitled to do, that he wished the voting to proceed openly; his object being that Staienus might know how much he owed, and to whom he owed it. The jurors were of different sorts. A few were venal, but those few were all in a rage. Persons who make a practice of taking bribes at political elections are always very unfriendly to candidates whose money they believe has been kept back; and so here those of the same stamp among the jury had come into court prepared to make a dead set against the accused. The rest thought him eminently guilty; but they were waiting to see how those jurors would vote who had, as they believed, been bribed. They would then be able to determine who was likely to have been guilty of corrupt practices.

XXVIII. Lo, and behold! the issue of the lot assigns the responsibility of voting first to Bulbus, Staienus, and Gutta! Everybody is on the tiptoe of expectation to see what verdict these unprincipled and mercenary jurors would record. All three of them, without any hesitation,

76. vote "guilty." On this the others began to feel uneasy: they could not be quite clear about what had been going on. Then the shrewder ones among them, men who belonged to the good old school of jury-courts, though they were unable to acquit one who was obviously guilty, felt at the same time unwilling without further inquiry to vote right off for a conviction in a case where it had come to be suspected that bribery had been brought into the field against the defendant; and so they held the charge "not proven." Certain austere persons again, though it was a fixed principle with them that the

motives with which each individual acted ought to be taken into account, thought that the fact that it was only on receipt of a bribe that others had returned a righteous verdict ought not to prevent them from standing by their previous decisions ; these found him guilty. Five there were in all whom inadvertence, or compassion, or some suspicion or other, or interested motives, prompted to vote for the acquittal of poor innocent Oppianicus !

Immediately on his conviction Lucius Quinctius, an ^{77.} out-and-out demagogue, who made a practice of filling his sails with every breeze produced by town-talk and public meetings, believing as he did that the senatorial administration of justice was by this time falling out of favour with the people, imagined that he had before him an opportunity of making the unpopularity of that order the means of his own aggrandisement. He delivers one or two impetuous and virulent harangues, crying out with the authority of a tribune that *jurymen had taken bribes to convict an innocent man*, and representing that *the issue involved the fortunes of every individual*, that *trial by jury was a fiction*, and that *no one who had a wealthy enemy could possibly be beyond the reach of danger*. People who were ignorant of the whole affair, never having set eyes on Oppianicus, and believing that an excellent citizen and a thoroughly respectable person had been undone by bribery, began in all the heat of suspicion to canvass the matter openly and to demand an investigation into the facts. ^{78.} It was at this very time that Staienus came by night, at the summons of Oppianicus, to the house of that worthy citizen Titus Annius, an intimate friend of my own. You all know the rest—how Oppianicus tackled him about the money,

how he promised to give it up, how their whole conversation was heard by reputable persons who had at the time intentionally placed themselves in concealment near at hand, how the matter was brought to light and dragged before the court, and the whole sum forcibly extorted from Staienus.

XXIX. The part that our friend Staienus used to play had come to be well known and thoroughly familiar to people in general. There was no infamy of which he was not liable to be suspected. Those who attended the meetings did not understand that it was money which he had engaged to expend on behalf of the defendant that he had kept to himself; nor, indeed, were they in the way of getting that information. What they knew was that there had been some talk of bribery at the trial. What they were told was that the accused was innocent of the charge on which he was condemned. What they saw for themselves was that Staienus had voted for his conviction. And their inference accordingly was—from what they knew of the fellow—that he had not done so for nothing. In the case of Bulbus, of Gutta, and of some others there was ground for a like suspicion.

79. I acknowledge therefore—and the avowal may be made without prejudice now that I am addressing this honourable court—that, owing to the general ignorance which had hitherto prevailed, I do not say of the life, but even of the name of Oppianicus, owing also to the existing belief that it was a crying shame that an innocent man should have been undone by bribery (a suspicion which was further confirmed by the bad character of Staienus, and the disrepute of some jurors who were no better than he was), and owing, moreover, to the agitation of Lucius Quinctius,

who, in addition to the prestige of high office, was personally well fitted to inflame the passions of a mob—I acknowledge, I say, that feelings of bitter resentment and detestation were kindled against the court which heard the case. Nor do I forget that Gaius Junius, who had presided at the trial, was cast into the still-raging furnace of popular displeasure. Though an ex-aedile and one to whom general opinion pointed as a coming praetor, he was thrust forth from the legal profession—ay, and from public life itself—and that not by deliberate discussion, but by unreasoning clamour.

And I am not sorry that I am appearing on behalf ^{80.} of Aulus Cluentius now rather than then. His case remains the same in its absolute unchangeableness, but the incidental unfairness and bad blood have faded into the background: the element of disadvantage in the surrounding circumstances can do us no harm now, while we have still the benefit of the intrinsic merits of the case. I am sensible, therefore, of the attention with which I am now being heard, not only by those with whom lies the prerogative of judgment, but also by those who have only to form an opinion. But if I had been speaking in those days, I should not have been listened to; not that the case was different—it was the same then as it is now—but because the circumstances were not the same. And here is the proof of my assertion. Who at that ^{xxx} time would have dared to assert that Oppianicus was guilty of the charges on which he was convicted, and who dares now to maintain the contrary? Who at that time could have alleged that it was Oppianicus who bribed the tribunal, and who can deny it now? Who at that time would have been permitted to point out that

it was only after he had been already condemned by two verdicts of quite recent date that Oppianicus was brought to trial, and is there a man that will endeavour at this
81. time of day to impugn the statement? When, therefore, we have eliminated the strong feeling which time has toned down, my words have deprecated, and your uprightness and impartiality have put far from the deliberate discussion of the facts, what residue have we left in the case?

EIt is admitted that bribery was practised at the trial, and the question is, with whom did it originate, with the prosecutor or with the defendant? What the former says is this: "In the first place, the charges on which I based the prosecution were of the most serious character, and there was no need for bribery; secondly, the man whom I brought before the court had been condemned already, and so not even bribery could have saved him; and lastly, even had he been acquitted, my personal status and position would not have been prejudiced in any way." What has the defendant to say for himself? "In the first place, the many hideous charges that were brought against me were in themselves enough to fill me with apprehension; secondly, I saw that when ~~Fabricius~~ and ~~Scamander~~ were convicted as accomplices in my crime I was also involved in their condemnation; and lastly, my case was so critical that my personal status and position were entirely dependent on the issue of one single trial."

82. Well then, since Oppianicus had many weighty motives for bribing the court, while my client had none at all, let us try to find out where the money came from. Cluentius has kept his account-books with the most

scrupulous accuracy, and in this we have a guarantee that there cannot have been either any additions to or subtractions from his estate without the fact becoming known. For eight whole years this case has engaged your attention, and you have hunted up, turned over, and minutely investigated, in the account-books of others as well as of my client, everything that bears on the subject ; and all the time you have come upon no vestige of bribery on the part of Cluentius. But in tracking Oppianicus have we only footprints to follow, or can we, under your guidance, get at the very place where our quarry made his lair ? There are deposited in one place six hundred and forty thousand sesterces ; About £5440. they are deposited with a man of consummate effrontery, who is, moreover, a member of the jury. What more ^{83.} would you have ? Do I hear you say that it was Cluentius and not Oppianicus who set Staienus on to bribe the bench ? Why then were Cluentius and Cannutius indifferent about his absence when the jury was retiring to consider its verdict ? Why did not those who had given the money insist on Staienus being in his place when they asked the jury to retire ? Why was it Oppianicus who complained, and Quintius who insisted ? Why had the tribune's prerogative to be asserted in order to prevent the jury from retiring to deliberate without Staienus ? But you say Staienus voted for his conviction. Yes, for this was the guarantee he had given Bulbus and the others to make them think that Oppianicus had played him false. ~~XL~~ You have therefore, on the one side, a motive for bribery, the money, and Staienus with all his roguery and effrontery ; and on the other side honour, a reputable life, no suspicion of any such expenditure,

nor any motive for bribery ; and accordingly, now that the facts have been disclosed and all misrepresentation eliminated, you must allow the shame and infamy of the transaction to pass over to the side to which the other misdeeds have been brought home ; you must now at last rescue from odium one to whom, as you see, no blame has ever attached.]

XXXI. 84. But I shall be told that it was not to bribe the bench that Oppianicus gave Staienus the money, but for the purpose of arranging an amicable compromise. To think that a sensible person like you, Accius, and one with so wide an experience of affairs, should make such a statement ! There is a common saying that he has most wisdom to whom the appropriate idea spontaneously suggests itself, while he comes next who falls in with the happy thoughts of his neighbour. The reverse holds good of folly ; for he who has no ideas at all is not such a fool as he who approves his neighbour's foolish notions. This idea of arranging an amicable compromise Staienus hit upon while the matter was still of recent date, and when they had him by the throat ; or, if you like, the hint was given him by Publius Cethegus, as was commonly reported at the time of the 85. trial. You may remember that what men then said was that Cethegus had given Staienus insincere advice : he disliked the man, and felt disinclined to allow his villainy to stalk abroad in the community, and he saw, moreover, that one who had admitted that he had while a juror secretly and irregularly received a bribe from a defendant could not possibly escape justice. If Cethegus showed a want of principle in this, I suppose he only wanted to get rid of an opponent ; but if, on the other hand, the

situation was such that, while it was impossible for Staienus to deny having received the money, nothing could be more dangerous or more discreditable than to confess for what purpose he had received it, then no fault can be found with the advice which Cethegus gave. But there is a difference between the position in which 86. Staienus was then, Accius, and that in which you are now. In his really desperate plight anything he could have said would have been more creditable to him than if he had admitted the fact; but I wonder that you should have revived on this occasion the very farce which was at that time hissed and hooted off the stage. Why, how could Cluentius have made up his quarrel with Oppianicus, or with his mother either? Their names were down in black and white on the official register as prosecutor and defendant; Fabricius and his accomplice had been convicted; if another prosecutor were to come forward Albius could not slip through his fingers, and on the other hand Cluentius could not abandon the prosecution without incurring the disgraceful imputation of having made a false and frivolous accusation.

Was it then to induce Cluentius to play into the XXXII. hands of the defence? That would also come under 87. the head of judicial corruption. But for this purpose what necessity was there for making a juror the depositary of the money? And, in any case, what motive could there have been for employing throughout the negotiation the agency of Staienus, who was quite a stranger to both parties, and withal a most despicable and disreputable fellow, rather than that of some respectable person, on terms of friendship and intimacy with both?  But why am I arguing the matter at length, as if there were any

mystery about it, when the money given to Staienus bears on the face of it, by the figure of its sum total, the purpose for which it was intended as well as its amount? My statement is that sixteen jurors had to be bribed in order to secure the acquittal of Oppianicus, and that six hundred and forty thousand sesterces were lodged with Staienus. If the object was, as you say, to effect a compromise, what is the meaning of the odd forty thousand? If, as we say, the intention was to give each About of the sixteen jurors forty thousand sesterces apiece, £340. Archimedes himself could not have made a better distribution.

88. But you will tell me that by many verdicts already given it has been decided that it was Cluentius who bribed the jury. On the contrary, that direct issue has never up to this time been expressly brought before a court of justice at all. Much as the case has been discussed, and long as it has been canvassed, to-day for the first time has a defence been offered, and to-day for the first time has truth, relying on your honourable court, lifted up her voice against calumny. But let us see what those many verdicts are of which you speak. For I have fortified myself against every argument, and stand prepared to prove that the verdicts which were subsequently returned (as was alleged) with reference to the trial in question resembled rather the disastrous action of some cataclysm than a judicial process and a formal discussion, or else they did not make in any way against Habitus, or else were even in his favour, or else were of such a kind that they have never been either called or 89. considered judicial decisions. And here, more that I may conform to what is customary than because you are

not doing so of your own accord, I shall request you to favour me with an attentive hearing while I discuss individually the verdicts in question.

A conviction was obtained against Gaius Junius, who XXXIII. had presided at the trial under discussion. You may also say, if you like, that it was obtained while he was still President of the Court. So far was the tribune from allowing any grace in the action that he did not even defer to the provisions of the law. At the very time when it was not legal that Junius should be withdrawn from the court in which he was presiding to any other department of official business, he was himself haled away for trial. And for what sort of trial? I ask the question, gentlemen, because your looks give me such encouragement that I am minded to state without any further reserve facts over which I had thought that a veil ought to be drawn. Was it really a legal inquiry, I ask, a formal 90. debate, a judicial process? I shall suppose that it was. Of the populace whose excitement was humoured on that occasion let any one that offers tell us to-day what was the real charge on which Gaius Junius was impeached. No matter whom you ask, the answer will be the same: he took a bribe and compassed the ruin of an innocent man. That is the general belief. But if it had been true in fact, he ought to have been impeached under the same statute as *Habitus*. "But then he was himself hearing cases under that statute." *Quinctius* ought to have waited a few days. "But he wished to impeach him before demitting office, and before the prejudice had time to die down." From this you will see that the prosecutor placed all his hopes, not in the justice of his case, but in the circumstances of the time and in his

91. official position. He asked for a fine. Under what statute? Because, according to him, Junius had not taken the oath of office, an omission which never had the effect of prejudicing any one; and also because in the register which was produced in court at the time, full of erasures, that paragon of scrupulous conscientiousness, Gaius Verres, praetor of the city, had no note of the appointments made by Junius to casual vacancies in the panel of jurors. On these most trivial and inconclusive grounds, gentlemen, which should never have been brought before a court of law at all, Gaius Junius was found guilty. It was not argument that crushed him, but ephemeral excitement.

XXXIV. Do you think that this verdict ought to count against
92. Cluentius? Why? Granting that Junius had not complied with the law in filling up vacancies, or that he had at some time or other neglected to take some oath of office, does it follow that his conviction involved any decision affecting Cluentius? "No; but the ground of his conviction under these laws was that he had committed an offence against another statute." Is it possible for those who make this admission to maintain in the same breath that his was a fair trial? "The people of Rome were on that occasion up in arms against Gaius Junius, for the reason that they believed that his agency had been employed in bribing the bench at the trial of Oppianicus." Well, then, has any change taken place in the facts of the case now? Is the issue, the motive of his trial, the complexion of the whole affair, in any way different now from what it was then? I do not believe it possible that any change can have occurred in
93. regard to any essential feature of the transaction. What,

then, is the reason why my defence is being listened to now with such hushed attention, whereas in those days Junius was deprived of the privilege of defending himself? Because in those days the only factors in the case were prejudice, misrepresentation, suspicion, public meetings inflamed day after day by the arts of the agitator and the demagogue. The tribune who denounced Junius at these meetings also appeared to prosecute him in court, and he came there not only from his meeting but with it trooping at his heels. It seemed as if the Aurelian Staircase, then recently erected, had been built to serve as a kind of theatre for the trial; and when the prosecutor had packed it with an excited throng, the friends of the accused had never a chance of even getting up to speak, much less of saying a word on his behalf. Not long ago, before my colleague Gaius ^{94.} Orchivius, the jury refused to place upon the roll for trial an action brought against Faustus Sulla for the recovery of public moneys remaining in his hands; not that they thought either that Sulla was above the law, or that a suit about public moneys was paltry and insignificant, but because they had no faith in the possibility of a fair debate with a tribune of the people conducting the prosecution. Well, shall I compare Sulla with Junius, the tribune I refer to with Quintcius, or, again, the one occasion with the other? Sulla had great wealth and a multitude of kinsmen, connections, intimate friends, and dependents; Junius enjoyed only a small and insignificant share of these advantages, obtained and acquired by his own personal exertions. In the one case, the tribune was a dispassionate and unassuming person, and, so far from being factious

himself, was the enemy of factiousness in others ; in the other he was a quarrelsome, scurrilous, and unruly demagogue. On the one occasion there was peace and quietness, on the other nothing but commotion and bad blood. Nevertheless in the case of Faustus the jury held that a defendant was unfairly handicapped when his opponent's authority as prosecutor was further backed by the weight of high official position.

xxxv. This is a consideration, gentlemen, which in your wisdom you should carefully ponder. You ought to be fully alive to the harm and the danger to which each one among us may be exposed from the violence of the tribunate, especially in a blaze of strong popular feeling, when public meetings have been worked upon by the arts of the agitator. Why, even in our golden days, when men shielded themselves not by democratical posing but by their high standing and blameless lives, neither Publius Popilius nor Quintus Metellus, though both men of the highest renown and distinction, was able to stand against a tribune's violence ; much less can we be safe in these degenerate times, and with such men in office, if we cannot rely on your wisdom and the redress afforded by courts of law.

96. The trial of Junius, then, gentlemen, had no resemblance at all to a regular trial. No moderation was observed, traditional usage was disregarded, the case for the defence was never stated. It was a piece of high-handed violence, resembling, as I have often said, some cataclysm or hurricane—anything rather than a regular trial, or a formal debate, or a legal inquiry. But even if there be any one who believes it *was* a regular trial, and who thinks that the verdict thus given ought to be

maintained, he must nevertheless keep this case separate from that of Junius, from whom, it is alleged, a fine was sought to be recovered either because he had not taken the oath of office, or else because he had not conformed to law in filling up a vacancy on the panel of jurors. The case of Cluentius can have no possible connection with the statutes under which that fine was claimed.

But you tell me that Bulbus also was found guilty. 97. Say, further, that he was found guilty of treason, and you will see that the trial of Bulbus had nothing to do with the trial of Oppianicus. "But his connection with the latter trial was brought up against him." Granted; but it was also proved from the despatches of Gaius Cosconius, and the evidence of several witnesses, that he had made overtures to a legion in Illyricum, a charge which was within the special province of the court before which he appeared, as the offence fell under the law of high treason. "But still it told heavily against him." That is mere guess-work; and if guess-work is admissible, you will perhaps find my inference much nearer the mark. My opinion is that it was because Bulbus was a worthless, infamous rascal, who brought the stain of many a crime with him into court, that he was all the more readily condemned. You select from the whole case against him the part which suits your purpose, and then say it was that which guided the jury to their decision.

This verdict against Bulbus therefore ought no more xxxvi. to be allowed to prejudice my client than the two others 98. referred to by the prosecutor, those, namely, against Publius Popilius and Tiberius Gutta, who were impeached for corrupt electioneering practices. Why, they were prosecuted by men who had themselves been found

guilty of the same offence ; and I do not believe it was because they showed clear proof that the defendants had taken bribes while serving as jurors that these men were restored to their civil rights, but because they succeeded in satisfying the court that, having brought others to account for the same misdemeanour as that by which they themselves had come to grief, they were entitled to be admitted to the rewards offered by law. It seems to me, therefore, that no one can fail to see that there cannot possibly be any connection between their conviction for corrupt practices and the case of Cluentius now before your court.

99. But what of the conviction of Staienus ? Gentlemen, I do not say now, though I almost think I should, that he was convicted of high treason. I do not propose to read the evidence given against him by men of the greatest distinction—men who served under the illustrious Mamerlus Aemilius as lieutenants-general, as captains, and as military tribunes. That evidence clearly proved that the mutiny which was stirred up in the army was mainly attributable to the machinations of the quaestor Staienus. I do not even propose to read the evidence

About given with regard to the six hundred thousand sesterces

£5100. which he received on the head of the action brought by Safinius, and then quietly kept to himself, just as he did

100. afterwards at the trial of Oppianicus. I pass over these and many other charges brought against Staienus at his trial. What I do say is that, when they were conducting his prosecution, Publius and Lucius Cominius, distinguished and eloquent members of the equestrian order, had on that occasion the same point at issue with Staienus as I now have with Accius. The Cominii said, and I say

too, that Staienus received money from Oppianicus to bribe the bench. Staienus alleged that he took it with the view of arranging a compromise. Men laughed at the 101. notion of an amicable compromise effected by him, and at his appearing in the *rôle* of an honest man: it reminded them of the gilt statues he set up at the temple of Juturna, with an inscription which proclaimed that "Kings had been by his means restored to friendship with Rome." All his frauds and impostures were raked up; his whole life, so disreputably spent, was laid bare; his beggarliness at home and his gains in the law-courts were brought to light. There was something unsatisfactory about the idea of so mercenary a person acting as the negotiator of peace and goodwill; and the result of all this was that Staienus, urging the same defence as Accius does now, was found guilty, while the Cominii, 102. taking the same line as I have taken all through the case, made good their charge. Put it in this way. The conviction of Staienus carried with it, by implication, the finding that it was Oppianicus who had tried to bribe the bench, and that it was Oppianicus who gave money to a juror for the purpose of buying votes. We have agreed that the guilty party must be either Cluentius or Oppianicus. But no trace can be found of any money belonging to Cluentius having been given to a juror, while money belonging to Oppianicus was recovered from a juror after the trial. In all these circumstances, can there be a doubt that the conviction of Staienus, far from making against Cluentius, strengthens in the highest degree the case for the defence?

So far, then, I find that the trial of Junius was of such 103. XXXVII. a character that it should be called, in my judgment,

not a judicial process, but an insurrectionary outbreak, the lawless action of a mob, the furious onset of a tribune. But even if any one thinks it deserves the name, he must nevertheless admit that the fine sought to be recovered from Junius can have no possible connection with the case of Cluentius. My conclusion therefore is that the conviction of Junius was obtained by unconstitutional proceedings ; those of Bulbus, Popilius, and Gutta do not tell against Cluentius ; while that of Staienus is even in his favour.

Let us see if we can bring forward any other judicial decision that is in favour of Cluentius. Was not Gaius Fidiculanus Falcula impeached, he who had voted for the conviction of Oppianicus, though indeed he had sat only a few days on the bench as a substitute—a fact which excited a great deal of feeling against him at his trial ? He was impeached, and that twice ; for Lucius Quinctius, by the factious and violent harangues he delivered day after day, had succeeded in making him extremely unpopular. At the one trial it was proposed, just as in the case of Junius, to fine him for having served as a juror when the duty did not devolve on the decury to which he belonged, and in contravention of the statute. When Falcula was impeached the times were a little quieter than they had been at the trial of Junius, but the charge and the statute under which it was preferred were nearly identical ; and because there was no sedition, no violence, no disorder when he was tried, he was acquitted without any hesitation on the first hearing of the case. I waive this acquittal ; for even though he may not have made himself liable to the fine in question, it is still quite possible that he may have taken a bribe

while serving as a juror, just as much as Staienus, whose case was never tried under the law concerning judicial corruption, as it was not the province of the court before which he appeared to administer it. What was the 104. charge made against Fidiculanus? The charge was that he had taken four hundred thousand sesterces from Cluentius. What was his rank? He was a senator. About £3400. When impeached under the statute by which senators are usually called to account in a case of this kind—I mean the statute providing for the recovery of moneys unlawfully received—he was under that statute triumphantly acquitted. For the case was tried in the good old fashion: there was no violence, no intimidation, no jeopardy. Every argument was stated, explained, and driven home; and the court was brought to believe, not only that a defendant could fairly have been found guilty by a juror who had not been present throughout the trial, but that even if the said juror had known nothing at all beyond the verdicts by which, as was admitted, the defendant's case had been previously prejudiced, he would not have been bound to listen to any further proof.

On this the five jurors who, angling for the futile XXXVIII. twaddle of ignorant persons, had voted for the acquittal of Oppianicus, became very unwilling to have their clemency commended. If you had asked them whether they had served as jurors at the trial of Gaius Fabricius, they would have replied in the affirmative. If they had been questioned as to whether he was impeached on any other charge except the alleged procuring of poison for Habitus, they would have said, "No." Had they been further asked what their verdict was, they would have answered, "Guilty," for no one voted for an acquittal. In the same

105.

way if they had been asked about Scamander, they would assuredly have given the same replies. True, he was acquitted by one single vote, but none of them would have cared at the time to have that one vote credited to
106. him. Which, then, of the two would have been in a better position to justify the vote he gave, he who says he was consistent with himself and with the verdict which had been passed, or he who replies that he is lenient with the principal in a crime, but most rigorous in dealing with his abettors and accomplices ? However, I ought not to discuss the vote given by these jurors, for I do not doubt that it was the shock of some sudden suspicion that made such honourable men recede from the position they had taken up. While therefore I have no fault to find with the clemency of those who acquitted him, I commend the consistency of those who, of their own accord and not through the villainy of Staienus, acted in harmony with their former findings. I also praise the wisdom of those who, being utterly unable to acquit one whom they knew to be a notorious criminal and whom they had themselves virtually found guilty on two previous occasions, held the case not proven ; but who, in view of the grave dis-
honour brought upon the bench by the suspicion of so foul a proceeding, elected to give their vote of con-
demnation when the facts should shortly afterwards be
107. brought to light. But do not rest your opinion of their wisdom on their conduct alone : consider their personal character, and you will allow that their course of action was most just and most wise. Can you mention any man of greater natural ability, more accomplished as a lawyer, or more scrupulous and blameless in point of honour, conscientiousness, and sense of duty, than

Publius Octavius Balbus? He did not vote for an acquittal. Can you mention any man of greater force of character than Quintus Considius, more familiar with courts of law and with the high tone which should distinguish all their proceedings, or more eminent for moral worth, sound judgment, and personal weight? No more did he acquit him. It would take too long to speak in this way of the merits of each of them individually; familiar as they are to all, they stand in no need of any flowers of rhetoric. What a noble character was Marcus Juventius Pedo, one of the good old school of jurors! and Lucius Caulius Mergus, and Marcus Basilus, and Gaius Caudinus, whose eminence in criminal trials was in each case coincident with our country's golden days. To the same category belong Lucius Cassius and Gnaeus Heius, men whose uprightness was equalled only by their sagacity; and none among them all gave his vote for the acquittal of Oppianicus. With them voted also Publius Saturius, who, though the youngest of them, was not inferior in ability, scrupulousness, or conscientiousness to any of those whom I have already mentioned. How eminently innocent must Oppianicus have been, 108. when he who acquitted him is credited with interested motives, he who deferred judgment with caution, and he who condemned him with consistency!

During the agitation of Quinctius which followed the XXXIX. trial, these facts were never stated either at a public meeting or in a court of law. He would not allow any statement to be made; and, indeed, owing to the excitement of the mob, it was impossible for any one to command a hearing. So after effecting the overthrow of Junius he turned his back on the whole matter; in a

day or two he went out of office, and he became aware, moreover, that the popular excitement had cooled down. But if he had cared to impeach Fidiculanus at the time when he impeached Junius, Fidiculanus would never have had a chance of replying. At first, indeed, he kept threatening all the jurors who had voted for the conviction of Oppianicus. You knew the fellow's arrogance, you knew his conceit, and his tribunician vapourings. Gracious heaven ! what a nuisance he was, with his lordly airs, his mistaken estimate of himself, and his offensive and unbearable superciliousness ! Why, he actually took it sorely to heart—and it was this that prompted his subsequent line of action—that Oppianicus had not been pardoned in compliment to himself and the defence he made ! Just as if the fact that his client had betaken himself to such an advocate ought not to have been a sufficient indication that every one else had turned his back on him. Why, there was no lack of eloquent and distinguished counsel in the capital, some one of whom would surely have undertaken the defence of a Roman knight, of high standing in his own town, if he had thought that such a desperate case as his was could be defended with credit.

XL. 110. But as to Quinctius, what case had he ever pleaded before, though he was now about fifty years of age ? Who had ever seen him acting, I do not say as counsel, but even as a witness to character or as a general supporter ? He had swooped down on the long empty rostra and the well-known spot which, since the advent of Lucius Sulla, the tribune's eloquence had forsaken, and had recalled the populace, unaccustomed as they now were to public meetings, to a semblance of the former practice ; for which

reason he was for a little while something of a favourite with a certain class of men. But how heartily was he hated at a later day by those very friends of his who had helped him to climb to a still higher eminence! And 111. with good reason; for just recall his general demeanour and superciliousness, and in particular the expression of his countenance, and his mode of dress, and that gorgeous purple robe that he used to wear, trailing at his heels. Just as if it were altogether intolerable that he should have come off second best in a lawsuit, the fellow appealed the matter from the courts of justice to the public platform. And yet are we not often found complaining that there is no adequate career in this country open to self-made men? I deny it, and say that nowhere was there ever a greater. Here at Rome if any man of humble origin shows in his life that he can maintain by moral worth the high standing which rank confers, he gets as far as industry and integrity can carry him; while 112. those again who have nothing but their humble origin to rely on often obtain higher preferment than if, with the same personal shortcomings, they had instead been men of the highest rank. To confine myself to the case of Quintcius. If he had been of noble birth, who could have put up with his insolence and his overbearing presumption? Because he was of humble origin men *did* put up with it, considering that he ought to be allowed the advantage of any good points for which he was indebted to nature, but considering at the same time that, in view of his low extraction, his uppishness and arrogance ought to meet with ridicule instead of exciting dismay.

But to resume. Will you, who are always quoting XLI. precedents, be good enough to tell me what in your

opinion was decided on the occasion of the acquittal of Fidiculanus? Surely that he got nothing for his vote.

113. But I shall be told that he had voted "guilty"; that he had not heard the whole case; that he had often been virulently abused by Lucius Quinctius at every one of his meetings. Well, then, all the trials that were got up by Quinctius were the work of injustice, misrepresentation, disorderliness, demagogism, and faction. Granted, you say: Falcula may possibly have been innocent. This amounts to an admission that somebody voted for the conviction of Oppianicus without making any money by it; that Junius did not appoint to the vacancies on the bench such persons as would take a bribe to vote for a conviction; that it is credible that some one was uninfluenced by bribery in convicting Oppianicus without having been a member of the panel as originally constituted. But if Falcula is innocent who, I ask, is guilty? If he did not get anything for convicting Oppianicus, who did? I deny that there was any charge made against any of them which was not made against Fidiculanus: that there was some particular element in the case of Fidiculanus which was

114. not also present in the others—that I deny also. You rested your case on precedent; and you must therefore either find fault with the verdict here, or else, if you accept it as a righteous verdict, you must admit that the conviction of Oppianicus was not procured by bribery.

And yet a sufficiently strong argument could be found in the fact that none of all those jurors was brought to trial after Falcula's acquittal. What is the good of your stringing together a list of persons found guilty of corrupt practices, under another statute, on definite

charges and abundant evidence? In the first place, those to whom you refer ought to have been prosecuted under the law which provides for the recovery of moneys *rebus re* unlawfully received, and not on a charge of corrupt practices; for if this allegation told against them when on their trial for corruption, though the statute under which they were impeached was a different one, it would surely have told much more strongly against them if they had been brought up under the statute which deals specially with the offence in question. Secondly, if there was so much 115. weight in the charge you allude to that, no matter under what statute these jurors were severally brought to trial, it was this that dealt the fatal blow, how is it that the others were not also impeached when prosecutors were so plentiful and rewards so valuable?

Here, though it ought not to be called a legal decision, you bring forward the fact that in the case of Publius Septimius Scaevola a separate charge was made on this head in assessing the amount he was to refund. Since those whom I have the honour to address are learned in the law, I do not need to explain at length what the prevailing practice in this matter is. The scrupulousness which is commonly brought to bear on the other parts of an action-at-law has never been observed in the same degree after the defendant is found guilty; and in assessing the amount of restitution to be 116. made the jurors either refuse to entertain any capital charge which it may be proposed to make an element in the assessment,—on the view that the man whom they have once condemned is now their enemy,—or else they pay but little heed to the rest of the proceedings, thinking that they have fully discharged their obligations by

passing judgment on the defendant. Accordingly there are many cases where persons have been acquitted of treason, though when they were convicted of malversation a charge of treason had been made an element in the assessment; and further it is a matter of daily occurrence that after a conviction for malversation the same jury refuses to convict the very persons into whose hands it has been determined in the assessment that the misappropriated money found its way. Now by such occurrences legal decisions are not overturned; they only establish the point that an assessment is not a legal decision. Scaevola was found guilty on other counts altogether, supported by abundant evidence from Apulia. Every exertion was made to have this capital charge entered as an element in assessing the amount he was to refund; and if this assessment had had the weight of a judicial precedent, he would afterwards have been brought to trial under this very statute either by the same persons or by others with whom he was at variance.

XLII. 117. Next comes what the other side call a decision, though our forefathers never dignified it by that name, and never respected it as a judicial precedent; I mean the stigma officially affixed by the censors. But before proceeding to discuss this subject I must say a word or two about my own personal obligations, in order that you may see that the danger in which my client stands has not kept me from remembering what is due to the relations in which friendship has placed me to others as well as to him. I am a personal friend of both the worthy gentlemen who last held the censorship: with one of them, as most of you know, I am on terms of familiar intercourse and of the closest intimacy—an

intimacy cemented by mutual good offices. In saying, 118. therefore, what I may have to say with reference to their note of censure, I shall speak with the wish that all my words may be taken as referring not to the action of these individuals, but to the censorial system in general ; and I shall easily prevail on my good friend Lentulus—of whom I would speak with the respect due to his eminent personal worth, and to the high official preferment which he has obtained from his fellow-citizens—to permit me to draw on that store of loyalty and vigilance, as well as of intellectual force and outspokenness, which he is wont to put at the disposal of his own friends in similar emergencies. I shall limit my demands, however, to just the amount which I cannot forbear to appropriate without imperilling my client's case. And I shall speak throughout with all due caution and circumspection, so that, while no one can think that I have forgotten what is in honour due to the defendant, no one may imagine, on the other hand, that I have either disparaged the dignity of any public officer, or outraged any considerations of private friendship.

I find then, gentlemen, that the censors stigmatised 119. certain members of the jury which Junius directed, assigning the facts alleged as their reason for so doing. Now I shall first advance the general proposition that the censor's stigma has never been so satisfactory to our countrymen as the verdict of a court of law ; and without wasting time on what is notorious I shall cite one single case by way of example. Gaius Geta, after being expelled from the senate by the censors Lucius Metellus and Gnaeus Domitius, was himself at a later date elected to the censorship ; that is to say, a person of whose moral

character the censors had expressed disapprobation was afterwards charged with the control of the morals of the whole community, including the very persons by whom he had been censured. Now if the censorial stigma were accounted a judicial precedent, men who have been branded with it would be shut out alike from access to office and from restoration to the senate, just as those found guilty of a charge involving civil infamy are for 120. ever barred from all preferment and official rank. The fact is, however, that while a person whose conviction has been procured—say for theft by a freedman of Gnaeus Lentulus or of Lucius Gellius—will lose every privilege of rank, and will never recover a rag of his reputation, those whom the two censors Lucius Gellius and Gnaeus Lentulus themselves, men of the greatest distinction and intelligence, stigmatised as guilty of theft and embezzlement, not only returned to the senate but were even acquitted on being tried for the offences laid to their charge.

XLIII. In olden times, no one was allowed to act as an arbitrator even in the most insignificant pecuniary suit, not to speak of an action involving personal reputation, unless both the contending parties had agreed to have him. And so in all statutes which specify disqualifications for filling a magistracy, or being chosen as a juror, or undertaking a prosecution, nothing is said about the censorial stigma ; for while our forefathers intended these magistrates to be a terror to evildoers, they did not mean them to have the power of inflicting life-long punishment. 121. I shall therefore prove not only that the censor's mark of reprobation has frequently been cancelled, as I have just shown, by the votes of the Roman people, but also that it has been annulled by the verdicts of men who,

being on their oath, were bound to be more conscientious and careful in giving their decision. In the first place, in many cases where defendants had been branded by the censors for receiving money illegally, juries consisting of Roman senators or Roman knights have before now preferred to be guided by the dictates of their own consciences rather than by the impressions of these officials. Secondly, the city praetors, who are bound by their oath of office to register in the select list of jurors only such as bear the highest character, have never considered the censorial stigma a disqualification. And lastly, there have been 122. numerous cases in which the censors themselves departed from the decisions, if you will call them decisions, of former censors. Nay, even colleagues in the censorship think so little of the decisions which they arrive at individually that the one will not only find fault with the other's verdict, but will even annul it: the one wishing to expel a man from the senate, the other keeping him where he is, and deeming him worthy of membership in that august assembly; the one proposing to disfranchise an individual or to remove him from his tribe, the other vetoing the proposal. How, then, can you entertain the idea of calling the censorial stigma a judicial decision when you see it annulled by the people, rejected by jurors on their oath, ignored by magistrates, reversed by those who have obtained the same office, and made the subject of disagreement even between two colleagues?

This being so, let us see what it is that the censors 123. XLIV. are said to have decided with reference to the corrupt practices at the trial of Oppianicus. And first let us determine whether the thing is true because they affixed their note of censure, or whether they affixed their note

because the thing was true. If their official note makes it true, look to what you are about, or you will find that you are handing over to the censors for the future despotic authority over every individual member of this community; that the censorial stigma can bring quite as much disaster on our country as all the horrors of proscription; that hereafter the censor's pen, to blunt the point of which our ancestors devised so many precautions, is to be as full of dismay for us as that of any dictator.

124. But if, on the other hand, it is the truth of the note affixed that ought to give it weight, let us ask whether it is true or false. Set aside the official deliverances of the censors; away with what is extraneous to the case. Show what money Cluentius gave, from what source and in what manner he gave it—point, I say, to a single vestige of bribery originating with Cluentius; next prove that Oppianicus was an honourable and upright man, that no one ever thought him anything but what he should be, and lastly, that his case was unprejudiced by any previous verdict. Then, but not till then, you may make as much as you please of the censors' official position, and maintain that their decision bears on

125. the issue before us. But so long as it is admitted that in Oppianicus we have a man who was found to have falsified with his own hand the public register of the town to which he belonged, who altered and interpolated a will, who by fraudulent personation procured the formal witnessing of a forged will, who made away with the person in whose name that will was sealed up, who murdered his own son's uncle while in the bonds of slavery, who effected the proscription and assassination of fellow-townsman of his own, who took to wife the

widow of one of his victims, who gave money to procure abortion, who murdered his mother-in-law and his wives, who did to death at one and the same time his brother's wife together with her expected offspring, as also his brother himself, and then finished up with his own children ; who was openly detected in the design of poisoning his step-son, and who when brought to trial, after his agents and accomplices had been found guilty, bribed a juror to buy the votes of his colleagues ;—so long, I repeat, as these facts are admitted in regard to Oppianicus, while there is no evidence to fasten any charge of corruption on Cluentius, what ground have you for thinking that the censorial stigma, whether it represents the personal sympathies of these officers or merely their impressions, can either help your case or prove fatal to my guiltless client ?

What was it, then, that influenced the censors ? Why, XLV. 120 even they will not allege, to put the case as strongly as possible, that it was anything more than common talk and report. They will not assert that any evidence, whether oral or documentary, or any weighty proof whatever, had put them in possession of certain information, or indeed that they had made any investigation of the facts at all before they came to their decision. And even had this been the case, their decision would not necessarily stand so fast as to be incapable of being overturned. I shall not summon to my aid the great available wealth of instances, nor shall I adduce a case of ancient date, or any powerful and influential personage. Only the other day, on advocating before the praetors, Marcus Junius and Quintus Publicius, and the curule aediles, Marcus Plaetorius and Gaius Flaminius, the claim

of Decimus Matrinius, who fills the humble office of a clerk to the aediles, I persuaded them on their oath to choose as clerk one whom the censors actually notified that they had disfranchised. There was no fault to find with the man, and so they held that what they had to consider was his personal claims and qualifications, not the
127. opinion which others had formed of him. Similarly as to what the censors notified with reference to the bribery practised at the trial of Oppianicus, how can any one believe that they came to their decision after a sufficient and careful consideration of the facts? I find that they affixed a note against the names of Manius Aquilius and Tiberius Gutta. What is the meaning of this? Their statement must be that only two persons had been bribed: from which it follows that the other jurors got nothing for voting "guilty." It is not the case, then, that Oppianicus was ruined and undone by bribery, and those who found him guilty are not all, as Quinctius would have it in those harangues of his, to be suspected and condemned. I find that by the official deliverance of the censors it was determined that two men, and two only, were mixed up in the scandal. Otherwise the censors must advance the statement that some charge which they brought home to Aquilius and Gutta they have also brought home to the others who said "Not Guilty."

XLVI. It is altogether impossible to acquiesce in the suggestion
128. that the censors transferred a precedent from the usage of the army to their official notification of disapproval. Our ancestors established the rule that, in cases of a gross breach of military discipline on the part of a large body of men, punishment should be inflicted on a certain number drawn by lot; the intention being that while only a few

should actually suffer, the fear of punishment should extend to all. But surely it would be inappropriate for the censors to follow this analogy in bestowing official preferment, in passing judgment on their fellow-citizens, and in reprobating them for their misdemeanours. The soldier who, quailing before the furious onset of the foe, has deserted his post, may notwithstanding turn out afterwards a better soldier, a good man, a useful citizen ; and so, when any one had flinched in battle through fear of the enemy, our ancestors, while holding up to him the fear of capital punishment in all its terrors, introduced this drawing of lots in order that an excessive number should not undergo the punishment of death. But you 129. are a censor, and are you to do likewise in making appointments to the senate ? If several persons have been guilty of taking a bribe to convict an innocent man, will you, instead of punishing them all alike, pick and choose at your own discretion, and select as by lot a few out of many for official reprobation ? Shall then any individual who, to procure the ruin of a guiltless man, has bartered for ^{money} his honour and his conscience, take his place uncensured, with your knowledge and connivance, in the senate-house as a senator, among the Roman people as a juror, in the state as a citizen ? Shall not he who for filthy lucre has robbed an unoffending fellow-citizen of fatherland, of fortune, and of children, be branded with the stigma of the censor's inflexible reprobation ? Are you the controller of our morals, are you the high priest of this long-established and rigorous system, if you either knowingly retain in the senate any man on whom is the pollution of so great a crime, or rule that there is nothing in the fitness of things to require that like

offences shall be visited with like punishment? Or will you establish for unprincipled senators in time of peace the same method of punishment which our ancestors ordained should be prescribed for cowardly soldiers in time of war? No. If it was right to transfer this precedent from the usage of war to the censorial reprobation, the lot ought also to have gone with it; but if, on the contrary, it is quite out of keeping with the character of the censor's office to ballot for punishment, and so to entrust to the arbitrament of chance a question of criminal conduct, then surely it is not right that where many are guilty a few only should be capriciously selected for official censure.

XLVII. 130. But we all know that the notifications in question were made for the sake of catching, as it were, the breeze of popular favour. The matter had been canvassed at public meetings, and without investigating the facts the mob had accepted one statement of the case; no one was permitted to say anything on the other side, and indeed no one felt in any way concerned to maintain the opposite view. Further, the jury courts, as then constituted, were in very bad odour. Only a few months after the trial they had been the scene of another grave scandal—the marked voting-tablets; and it was considered inconceivable that the censors should overlook and ignore this blot on our judicial procedure. These magistrates wished to brand by their official stigma men who were already notorious, as they saw, for their other vices and for infamy of every kind, and all the more because at this very date, during their term of office, the jury-courts had been thrown open to the equestrian order. Their aim was to get the credit of having,

in the exercise of their high functions, censured the senatorial courts through the degradation they inflicted on such as deserved it. But if I or some one else had 131. had an opportunity of stating this case to those same censors, I should assuredly have carried my point with sensible men like them; for the facts show that they were not in possession of any sure or certain information, and that the whole affair of their official censure was only a bid for popular applause and acclamation. Lucius Gellius alleged as his reason for censuring Publius Popilius, who had voted for the conviction of Oppianicus, that he had taken a bribe to convict an innocent man. Now just think what a gift of second sight is implied in knowing the innocence of a defendant on whom perhaps he had never set eyes, when all the time men of the greatest sagacity, after hearing the case as jurors, brought in a verdict of "not proven," to say nothing of those who voted "guilty."

But be it so. It is a conviction that Gellius records 132. against Popilius; he finds him guilty of having taken a bribe from Cluentius. Lentulus takes an opposite view; for though he refuses to admit Popilius to the senate because he was a freedman's son, he leaves him his senator's seat at the games along with the insignia of his office and exempts him from all ignominy. And by so doing he pronounces that Popilius was not bribed to vote as he did for the conviction of Oppianicus. Again, in giving evidence on a subsequent occasion at a trial for corruption, Lentulus makes a point of speaking in high praise of Popilius. Accordingly if Lentulus did not adhere to the decision of Gellius, while Gellius, for his part, did not acquiesce in the judgment of Lentulus—if

neither of the two censors saw any necessity for standing by the opinion of his colleague—is there any reason why any of us should think that their official stigma ought in every case to be immutable and valid for all time?

LVIII.
133.

But you will tell me they censured Habitus himself. Yes, but not for anything discreditable, or for any false step—I will not say any stain—in his whole life; for indeed no man could possibly be more blameless or more upright than my client, or more conscientious in the observance of every social obligation. This the censors do not gainsay. In his case also they were influenced by the rumour of bribery at the trial. Their own personal opinion of the defendant's honour, uprightness, and goodness is all that we could wish; but they thought it was impossible for them to overlook the prosecutor after having censured the jury. With regard to this matter I shall merely, without saying anything further, adduce one single incident from the whole range of

134. antiquity. I cannot help referring to the example of the great and illustrious Publius Africanus, who, when Gaius Licinius Sacerdos came forward at the review of the knights in his censorship, said, in a tone loud enough to let the whole assembly hear, that he knew for a fact that Lentulus had solemnly and deliberately perjured himself, and that if any one cared to come forward and accuse him he was free to make use of his evidence; and then, when no one did so, bade him pass on with his horse. The magistrate whose decisions were habitually accepted as sufficient both by his own countrymen and by foreign nations, did not consider his own private knowledge a sufficient ground for inflicting ignominy on a fellow-citizen. And if Habitus had been treated in the same way he could

easily, even with the censors for his judges, have held his own against groundless insinuations as well as against the odium that the arts of a demagogue had stirred up.

One point still remains which disquiets me more than ^{135.} anything else, and to which I hardly see how I can make a reply. You read out a clause from the will of Gnaeus Egnatius senior—a person, to be sure, of the highest respectability and intelligence!—where he says that he has disinherited his son on the ground that he had taken a bribe to secure the conviction of Oppianicus. Of this man's want of character and principle I shall not speak at any length: all I say is that, in the unnatural will you quote, the testator, while disinheriting the son he hated, appoints as joint-heirs with the son he loved men who were in no way connected with him. And I should advise you, Accius, to consider carefully whether you wish the deliverance of the censors to carry weight with it, or the action of Egnatius. If the latter, you make of no account the censor's official notification in the other cases; for Gnaeus Egnatius himself, whose authority you wish to have weight, was by them expelled from the senate. But if it is the deliverance of the censors that you wish to lay stress on, this Egnatius, whom his father disinherited with a censor-like notification of the why and wherefore, was by them retained in the senate though they expelled his father.

But you will tell me the senate decided unanimously ^{XLIX.} that there had been bribery at the trial. How so? “It ^{136.} took up the case.” Could the senate have refused to deal with so serious a matter when it was brought before it? When a tribune of the people had by popular agitation made the question all but one of fisticuffs, when

it was being said that the ruin of a most excellent and altogether guiltless man had been compassed by bribery, when the senatorial order was in a perfect blaze of unpopularity, was it possible to refrain from coming to some resolution? Could the excited passions of the populace have been ignored without the gravest national risk? But what was the resolution adopted? Mark its justice, its wisdom, its wariness. "If there are any by whose agency a public court of justice has been bribed." Does it look as if the senate is deciding that this offence had been committed, or as if it is expressing its indignation and displeasure in the event of its having been committed? Why, if Aulus Cluentius himself were asked what he thought of the jury-courts he would give the same opinion as did those whose votes, as you make out,

137. condemned him. But I ask you if Lucius Lucullus, a man of the highest intelligence, embodied in any law during his consulship the terms of the resolution of senate to which you refer, or if this was done a year later by Marcus Lucullus and Gaius Cassius, to whom, as being at the time consuls-elect, the senate had formally assigned the same duty? They did not. What you allege to have been effected by the money of Habitus, without adducing the faintest shadow of suspicion in proof of your assertion, was due, in the first place, to the fairness and sagacity they displayed in their consulship: they did not feel bound to submit at a later stage to the people a decree which the senate had passed with a view to quench the flames of a momentary outbreak of popular feeling. Secondly, the citizens of Rome themselves who had been worked up at an earlier date by the hypocritical protestations of Lucius Quinctius to clamour

for the introduction of the bill, were so moved by the tears of the little son of Gaius Junius that they ran together with great uproar to disown the whole inquiry and the statute under contemplation ; a fact which made us 138. appreciate the truth of the common saying that as the sea, though naturally calm, is ruffled and tossed by the violence of the winds, in like manner the Roman populace is peaceful if left to itself, but may be stirred up by the talk of agitators as by storms of the greatest fury.

There still remains a very weighty testimony which to L. my shame I had nearly passed over. It is my own,—so the other side alleges. Accius read out of some speech or other, which he said was one of mine, a passage in which the jury is charged to bring in a fair verdict, and special reference is made, among other trials which had not given satisfaction, to this very one before Junius. Just as if I did not admit, on opening for the defence, that the trial in question had excited great ill-will, or as if in speaking of the bad repute of the law-courts I could have ignored what was at the time in everybody's mouth ! But even if I *did* say something to that effect, I was not 139. stating an ascertained fact, nor was I speaking as in the witness-box ; my words were prompted by the exigencies of the situation, and did not convey an authoritative expression of my own deliberate opinion. I was conducting the prosecution, and accordingly I set myself at once to work upon the feelings of my fellow-countrymen through the jury which I was addressing ; and while I was adducing, not from what I myself thought, but only from what people said, a complete list of instances in which our courts of justice had given dissatisfaction, I could not have omitted the case of which you speak, as it had been

made the subject of so much discussion. But it would be a great mistake for any one to imagine that he possesses, in the speeches which I have delivered before courts of law, a certified declaration of my own convictions. Such speeches are invariably conditioned by particular cases and emergencies, and do not pledge the individual advocates themselves. If lawsuits could plead their own case, no one would retain counsel at ali. As it is, we are retained to set forth, not what is to be established by warrant of our authority, but what can be

140. deduced from the bare facts of the case in hand. It is related that the gifted Marcus Antonius was wont to say that the reason why he had never put any of his speeches in writing was that he might be able to repudiate anything that might at any time prove an inconvenient utterance. Just as if, unless we commit to writing whatever we may have said or done, it will not be preserved in the memories of men !

LI. For myself, I am more willing, in regard to such alleged inconsistencies, to follow the weighty example, among many others, of the eloquent and sagacious Lucius Crassus. In opposing the bill that was brought in against sending a colony to Narbo he had done his best to disparage the authority of the senate, while in supporting the Servilian law he had praised that body to the skies ; and so when acting as counsel for Gnaeus Plancus, who was impeached by Marcus Brutus, a vigorous and clever speaker, he is said to have been much nettled when Brutus put up two readers and got them to read turn about, from those two speeches, chapters which flatly contradicted each other, and further, with the view of inflaming against Crassus the minds of the jurors of that

time, made them read aloud from the latter of the two several passages in which the equestrian order was pretty roughly handled. Crassus accordingly commenced his 141. reply by setting forth the conditions of the two several occasions, in order to show that his argument had in each case been adapted to the facts ; and then, by way of letting Brutus know what sort of man he had provoked —with what a gift not only of eloquence but also of wit and humour—he retaliated by setting up three readers, each with a different treatise on civil law which Marcus Brutus, the father of “the Prosecutor,” as he was called, had left behind him. On their reading the opening words of these treatises, with which I imagine you are familiar—“*It fell out that we were in the country together at our place at Privernum, my son Brutus and I*”—he asked him what he had to show for that property. “*We were at our Alban villa, my son Brutus and I*:” he asked what had become of the Alban villa. “*When we happened to be staying at our place at Tibur, my son Brutus and I*:” he asked where it was now. Brutus, he said, being a man of sense, and seeing how extravagant his son was, had thought fit to leave a record of the estates which he was bequeathing to him. “And if he could have said with propriety that he had been at his baths along with a son of that age, he would not have omitted to mention it:” but he, Crassus, would not quote the father’s writings, but would go to his account-books and the censor’s register to ask his son what had become of those baths. This was how Crassus retaliated on Brutus, who thus had reason to regret the reading he had given ; and it may be that what annoyed him was being attacked for what he had said in speaking on politics,

142. where consistency is perhaps more indispensable. But in my case I am not annoyed at the quotations that have been made from my speeches. The passage quoted was quite appropriate to the special circumstances and to the case which was then being tried, and in saying what I said I did not commit myself to anything that should hinder me from honourably and unreservedly defending the present action. And even if I should choose to admit that, while I have now made myself acquainted with the facts in the case of Aulus Cluentius, I shared previously the current popular prejudice, could any one, I ask, find fault with me for that? No: you yourselves, gentlemen, must by every rule of justice grant me the request which I made at the outset, and which I repeat now, namely, that if you have brought with you into this court any unfavourable impression about the trial under discussion, you will divest yourselves of it now that you have come thoroughly to understand the case, and to know the whole truth concerning it.

LII. 143. And now, Titus Accius, since I have replied to all your averments on the subject of the conviction of Oppianicus, you must confess that you were much mistaken in thinking that I meant to set up a technical defence of Aulus Cluentius instead of clearing his character. You stated more than once that you had information that in defending this action I intended to avail myself of the protection afforded by the letter of the law. Can this be so? Are we to infer that we are betrayed behind our backs, by our own friends? Is there some one or other among our fancied friends who reports our tactics to the other side? Who was it that gave you this information? Who can have been so unconscionable?

To whom did I mention the matter? My belief is that no one is to blame; you must have got your information from the statute itself. But does it strike you that in my defence I have so much as mentioned the statute from beginning to end, or that I have defended this action in any other way than I should have done if Cluentius had been amenable to the letter of the law? Assuredly, so far as it becomes a man to speak positively, I have lost no opportunity of disposing of the odious accusation made against my client. What, then, is my 144. motive? Some one perchance will ask whether I disapprove of employing the protection of the laws to ward off the danger of a capital conviction? No, gentlemen, I do not, but I am following my habitual practice. In appearing for a reputable and intelligent person I do not confine myself to following my own counsel, but am also in the habit of allowing myself to be greatly influenced by the advice and inclinations of my client. I ought to be familiar with the laws which we lawyers are retained to expound, and which are our special province; and when this case was put into my hands I told Habitus at once that the clause which says, "*Whosoever shall have conspired to procure a verdict of guilty,*" did not affect him, but applied to the order to which we senators belong. On this he began to entreat me earnestly not to rest his defence on the point of law. I told him what I thought, but he won me over to his view, declaring with tears in his eyes that he was as anxious to preserve his reputation as to retain his civil rights. Though 145. I complied with his wishes, my reason for doing so—for indeed counsel ought not always to act as I did—was that I saw that there was a complete defence upon the

merits, apart altogether from the plea-in-law. I saw that the line of defence which I have been following would be more honourable to my client, though the other, which he would not allow me to adopt, would be less troublesome. But if our object had been merely to get a verdict, I should have simply quoted the statute, and then sat down.

LIII. Nor am I disturbed by the argument of Accius, when he says it is a monstrous thing that in cases of judicial circumvention the guilty party, if a senator, should be amenable to the laws, but if a Roman knight, should

146. not be so amenable. We shall look into the point presently ; but even were I to admit that it is monstrous, you, on your part, must admit that it is much more monstrous that in a state whose existence depends upon its laws, those laws should be given the go-by. Law is the bond which secures to us the honourable rank we hold in the commonwealth ; it is the basis of our liberties and the fountain-head of justice. The mind, the soul, the brain, the thought of a state is centred in its laws ; without law, it can make no more use of its members than our bodies can of their sinews, their blood, their limbs, without mind. The law has its ministers in our magistrates, its interpreters in our jurors ; it makes servants of us all only to set us free.

147. For what purpose are you, Quintus Naso, seated on that tribunal ? What constraining force is it by which you control the members of this most honourable court ? And you, gentlemen, to what end are you, so few in number, selected from the great host of your fellow-citizens to determine by your votes the fate of individuals ? By what right did Accius speak as he

pleased? Why am I allowed to address you at such length? What business have these clerks, these lictors, and the other officers of this court whom I see before me? All this, I take it, is done by law, and everything in this trial is, as I have already said, regulated and directed by what I may call an intelligent force, namely, the law. Well then, is this the only court of inquiry that is so controlled? What of that under Marcus Plaetorius and Gaius Flaminius for cases of assassination? What of that under Gaius Orchivius for embezzlement of public moneys? What of that in which I myself hear charges of malversation? What of that under Gaius Aquilius, before whom an action for corrupt practices is even now proceeding? What of the other courts of inquiry? Look round on all the departments of state administration, and you will find that everything goes on under the control and the direction of the law. If any one were to take it into his head to impeach you 148. in my court, Titus Accius, you would loudly protest that the statute of malversation does not apply to you; nor would this objection of yours be an admission of corrupt practices, but merely a way of avoiding a hardship and a risk to which the law does not expose you.

Now consider the issue involved, and the point of law LIV you are setting up. The statute in accordance with which this court of inquiry was established directs the President of the Court, that is Quintus Voconius, in conjunction with such jurors as may have been allotted to him—meaning you, gentlemen—to investigate charges of poisoning. In what cases? There is no limitation of persons: the words are, “*Whosoever shall have prepared it, sold it, bought it, had it in his possession, or*

administered it." Read on, and tell us what this same statute proceeds at once to add. "*And he shall investigate a capital charge brought against him*"—whom? The man who shall have conspired or combined? No. What then? Read on: "*Who being a military tribune in the four first legions, or a quaestor, or tribune of the people*" (all the magistrates are named in order), "*or who has or shall have given his vote as a senator*"—well, what about them? "*Whoever of these has or shall have conspired, has or shall have combined, to procure any man's conviction at a criminal trial.*" "*Whoever of these—*" Of whom? Obviously the persons mentioned in what went before. The difference between the two formulas, though indeed it is quite obvious, is shown by the very terms of the statute. Where it makes itself binding on every human being it runs thus: "*Whoever has or shall have prepared a noxious drug,*" thus making all persons—men, women, children, and slaves—alike liable to prosecution. If it had wished to treat conspiracy in the same way it would have added, "*or whoever shall have conspired;*" but as it is, the words are, "*And he shall investigate a capital charge brought against him who may have filled a magistracy, or given his vote as a senator: whoever of these has or shall have conspired.*"

149. Does Cluentius come under this head? Assuredly not. Under what head, then, does he come? No matter: he has refused to allow his defence to rest on the letter of the statute. Accordingly, I bow to his decision and throw the statute overboard; but to you, Accius, I shall make a brief reply, quite apart from the case of my client. There is, of course, in this case an element which Cluentius con-

siders as affecting himself personally, but there is also something else which, as I take it, personally affects me. He thinks that his interests demand that his defence should rest on the merits of the case, and on the actual facts, not on the letter of the law : and I conceive that my interests demand that it shall not be thought that I came off secnd best in any debate with Accius. This is not the only case in which I have to appear. My services are at the disposal of any one to whom my forensic qualifications may recommend themselves as adequate ; and I am unwilling that any of my present audience should imagine that, in my case, silence gives consent to the statements made by Accius in regard to the statute. I therefore comply with your wishes, Cluentius, in what concerns you : I do not read the statute, and I am not speaking now as your advocate. But all the same, I shall not refrain from stating the argument which is, I think, expected of me.

You consider it unfair, Accius, that the same laws LV. 150. should not be binding upon all. In the first place, even supposing I were to allow it to be ever so unfair, it only amounts to this, that we require a thorough change in our laws, not that we are to disobey the statutes which are actually in force. Secondly, is there any known instance of a senator declining to acknowledge the propriety of submitting himself to a greater degree of legal restraint, after having gained by the favour of his countrymen a higher stage in the ladder of official preferment ? Think of all the blessings we have to forego, all the troubles and difficulties we have to face ! And the only advantages to counterbalance it all are office and distinction. Why, just apply the same conditions

of life to the equestrian order and to the other privileged classes, and you will find they will not put up with them : their view is that those who have either lacked the ability to attain to the highest civil advancement, or else have not sought for it, ought not to be exposed to so many pitfalls in the way of statutory liabilities

151. and judicial processes. I do not need to mention any of the other laws which, though binding upon us, do not apply to the other classes in the state : this very statute "to provide against judicial circumvention" was carried by Gaius Gracchus, and was carried in the interests of the commons, not to their prejudice. Then came Lucius Sulla. He was very far from being a champion of popular rights ; but though by the very statute under which you are now exercising your functions as jurors he was appointing a special court to deal with the offence in question, he did not dare to saddle with a new department of judicial inquiry a community which had up to that time been beyond the scope of its operation. If he had thought that such a course was open to him, the well-known dislike which he had of the equestrian order would have made him only too glad to concentrate on this one court all the spleen of his proscription, as he

152. vented it on the jurors of the old *régime*. Take my word for it, gentlemen, and be on the look-out for the danger against which you ought to guard : the one object aimed at now is to involve the equestrian order in liability to this statute. And this is the aim not of all, but only of a few. There are senators whose upright and blameless character is to them a ready shield,—such as you in very truth are, and all whose lives have been free from the spirit of partisanship ; and the wish of their hearts is

that the knights should rank next to the senatorial order, and be closely united to it in the bonds of unanimity. But there are others who covet a monopoly of power for themselves, on which they will not allow any one else, whether individual or class, to encroach ; and these persons imagine that this one source of dread will enable them to bring the equestrian order under their control—if, that is to say, the rule is laid down that those who have served as jurors are liable to such a prosecution as the present. They see that the reputation of this order is establishing itself, they see that your decisions are finding favour, and they feel sure that they will be able to pluck out the sting of your rigorous procedure by holding this terror over your heads. Why, who would have the 153. courage to give a true and manly verdict in a case where the defendant is a person of rather more than average wealth, if he saw that he might have to answer to a charge of combination and conspiracy ?

How bravely did our Roman knights stand up against LVI. that distinguished and influential tribune Marcus Drusus, when, in conjunction with the whole aristocracy of the day, he was aiming at nothing short of bringing to trial in courts of this kind those who had exercised the functions of jurymen ! On that occasion those pillars of the people, Gaius Flavius Pusio, Gnaeus Titinius, Gaius Maecenas, and the rest of the equestrian order, did not act as Cluentius is acting now. They did not think they would be incurring any reproach by protesting, but offered the most frank resistance,—protesting and openly asserting, with the utmost courage and propriety, that if they had cared to bestow their endeavours on the pursuit of office they might, by the verdict of their country-

men, have attained to the most exalted position. They had seen, they said, without despising it, the prestige, the distinction, the exaltation inherent in such a career ; but, satisfied with the rank their fathers had held before them, they had preferred to live a life of quiet and repose, far from the blasts of popular prejudice and of 154. prosecutions such as this. “ You must either give us back the freshness of youth for the pursuit of office, or else, as that cannot be, leave us in the rank of life whose attractions led us to abandon that pursuit. We turned our backs upon the distinctions of office owing to its manifold risks ; and it is not fair that, after denying ourselves the favours which our fellow-countrymen have to bestow, we should be held liable to the risk of accountability to newly-instituted courts of law. A senator cannot urge this complaint, because these are the terms on which he begins his political career, and because he enjoys many distinctions that compensate him for its irksomeness. To him belong position, reputation, prestige at home, renown and influence among foreign nations, the embroidered robe, the curule chair, the insignia of office, the lictors’ rods, military command, provincial rule ; all of which,” they say, “ were to be held up, according to the design and intention of our ancestors, not only as the highest rewards for good conduct, but also as involving additional liability for wrong-doing.” These men were not protesting against being impeached under the statute by which *Habitus* is being prosecuted now, and which at that time was the *Sempronian* instead of the *Cornelian* as at present. They were aware that the statute in question did not apply to the equestrian order ; what they were anxious about was to secure themselves from

liability to the provisions of a new enactment. *Habitus* 155. has never so much as objected to render an account of his life even under a statute to which he is not amenable; and if this state of things meets with your approval, let us all make it our aim that the jurisdiction of this court be as soon as possible extended to all classes of the community.

But meanwhile all the blessings we enjoy, our rights, LVII. our liberties, our very existence, depend upon our laws; and therefore in God's name let us stand by them. Let us also remember how unfair it is that the people of Rome should not be watching their interests at this time; that having left their country and their fortunes in your keeping, they themselves are free from anxiety, and have no fear that the action of a few jurymen may bind them fast in the fetters of a law which they never sanctioned, and put them in the clutches of a court from whose jurisdiction, as they imagine, they are altogether exempt. My worthy and eloquent friend Titus Accius stakes his case 156. upon the argument that every law is binding on every citizen; and you give him a silent and attentive hearing, as you are in duty bound to do. Aulus Cluentius, though he is a Roman knight, makes his defence under a statute to which only senators and those who have held office are amenable: he will not allow me to enter a protest, and so entrench the artillery of my defence in the citadel of law. If he wins his case—and our confidence in your justice makes us feel certain that he will—the unanimous conclusion will be in accordance with the facts. Men will make up their minds, in view of the line of defence which has been followed, that it is his own spotless character that has prevailed, and that he has derived no protection from the letter of the statute, on which he declined to found.

157. Here there is a point which I have already said concerns myself,—a duty which I have to perform to the people of Rome, seeing that my professional position requires me to devote my best consideration and endeavours to defending individuals from the perils of actions-at-law. I see how powerful, how dangerous, how unlimited in jurisdiction is the tribunal which the prosecutors are seeking to set up in their endeavour to extend to the general public a statute which was directed against the order to which we senators belong. The words of this statute are, "*Whosoever shall have conspired*"—and you see how comprehensive that is; "*shall have combined*"—equally vague and indefinite; "*shall have complotted*"—this indeed is not only indefinite, but mysterious and unintelligible as well; "*or shall have given false evidence*"—no Roman commoner ever stood up in the witness-box but must face this risk, if Accius is allowed to have his way. As to the future, I make bold to say that no one will ever go into the witness-box again if the commons of Rome are to be exposed to the jurisdiction of this

158. court. But I promise each and all who may possibly get into trouble under this statute, without being really amenable to it, that if they care to retain my services, I shall rest their defence on the protection the law affords; and that I shall have no difficulty whatever, in this or in any similar court, in making good my case, availing myself to the full of the technical defence which I am on this occasion interdicted from employing by one whose wishes I am bound to respect.

LVIII. Gentlemen, I cannot doubt that if any charge such as the present were brought before your court against a

person not amenable to the statute,—although he might be in bad odour and personally objectionable to many, although you loathed him, although you might feel very reluctant to pronounce a verdict of acquittal,—you would nevertheless acquit him, reverencing the sanctity of your oath instead of indulging your rancour. For it is the duty 159. of an intelligent juryman to reflect that the functions which the state commits to him are defined by the extent of the commission with which he has been entrusted. He must remember that he has not only a power delegated to him, but also a trust reposed in him. He must have the strength of mind to acquit one whom he detests, or to convict another against whom he harbours no such feelings ; and he must always consider, not his own personal predilections, but the obligation imposed on him by the law and by his solemn oath. He must give his attention to the statute on which the indictment is framed, the kind of person whose case he is investigating, and the issue before the court. That is his duty ; and in addition, gentlemen, a wise and worthy citizen ought to reflect, when he enters that jury-box, that he does not sit there alone, and that it is not open to him to do just as he pleases. He must take with him as his assessors the law, conscience, righteousness, good faith ; and putting far from him passion, resentment, prejudice, fear, and all private predilections, he ought to rate above everything else the approval of his own conscience, Heaven's gift to us that cannot be taken from us. If conscience bears witness throughout our lives to purity in thought and deed, those lives will be free from fear, and in the highest sense virtuous.

If Titus Accius had been aware of this, or had ever 160.

given a thought to it, he would assuredly never have even attempted to say, instead of arguing the point as he did at length, that a juror has to decide as he thinks best, and ought not to be fettered by statutes. On this head, however, I imagine I have said enough for sensible men like you, though Cluentius would have been content with less, while the importance of the subject might have demanded more.

The remaining points are very few in number: and it is because they properly belong to your court that the other side thought they would have to trump them up and bring them forward, for fear they might be considered altogether too disreputable if they came before you with nothing but the odium against Cluentius to back LIX. them. You will realise that I could not help dwelling at length on the matters of which I have now treated, if you will be good enough to listen to the sequel. It will make it evident to you that I do not waste any time over such points as are capable of a short demonstration.

161. You alleged that the Samnite Gnaeus Decidius, the same who was proscribed, was badly treated in the day of his trouble by the members of my client's household establishment. The fact is, no one behaved more generously to him than Cluentius. It was his resources that supported him in his great misfortune, and of this Decidius himself is well aware, as also is every one of his friends and intimates.—You further said that a bailiff of my client offered personal violence to the herdsmen of Ancharius and Pacenus. Some ordinary shepherds' quarrel had arisen on the upland pastures, and the bailiffs of Habitus stood up for their master's property and for the rights of private occupation. This led to remon-

strances, but they showed the justice of their case to the other party, and then the disputants parted without any wrangling or appeal to law.—“A near relative was dis- 162. inherited by the will of Publius Aelius, and the defendant, an entire stranger, was made his heir-at-law.” In doing this Publius Aelius only discharged an obligation to Habitus; the latter was not present when the will was made, and the will itself was witnessed by Oppianicus, with whom Habitus was at daggers drawn.—“He refused to allow a legacy left by will to Florus.” That is not the case; thirty thousand sesterces had been inserted instead £255. of three hundred thousand, and as he thought Florus £2550. could not show a sufficient title, he wished to make him in some degree indebted to his personal generosity. So, after first refusing to allow the claim, he afterwards paid it without dispute.—“The wife of a certain Samnite, Ceius by name, had to be demanded from him when the Social War was over.” He had bought the woman from the speculators; but as soon as he was told she was a freewoman, he gave her up to Ceius without any litigation.—“There is one Ennius of whose property 163. Habitus is in possession.” This Ennius is a needy slanderer, in the pay of Oppianicus, who, after keeping quiet for quite a number of years, one day brought an action for theft against the slaves of Habitus, and has lately begun to sue Habitus himself. In the civil action, in which perhaps he will again have the advantage of your services as counsel, this fellow shall not escape, take my word for it, the penalty that attaches to fraudulent accusation.—And further, we are informed that you are suborning a certain person who is much given to hospitality, Ambivius, an innkeeper on the

Latin Way—to say that in his own hostelry he had violent hands laid on him by Cluentius and his servants. About this man it is not necessary for me to say anything at present. If he gives us an opening, this entertaining person, we shall respond in a way that will make him regret having gone out of his beat.

164. There you have, gentlemen, all the material that his accusers, after eight years' preparation, have succeeded in raking together for the whole case in order to prejudice the character of Aulus Cluentius. He is on his trial, and they would fain stir up ill-feeling against him. But how trivial in character are the allegations, how unfounded in LX. point of fact, and how little it takes to demolish them ! Listen now to what concerns the oath you have sworn, to what belongs to your court, to what the statute of poisoning, in terms of which you are here assembled, has imposed on you as a responsibility. I should like all to know how brief the statement of this case could have been made, and how large a portion of my speech has been imperatively demanded by my client's wishes, though your court has really no concern with it.

165. The prosecution has alleged that Aulus Cluentius made away with Vibius Cappadox by poison. Fortunately, there is present in court a most reputable and in every way worthy person, the Senator Lucius Praetorius, whose hospitality and intimate friendship this Vibius enjoyed. It was with him that he lived at Rome, and it was at his house that he fell ill and died. I assert that Vibius left no will, and that the succession to his estate was, by edict of the praetor, assigned to Numerius Cluentius, my client's sister's son, whom you see here in court, a young man of spotless

honour and outstanding reputation, and a Roman knight to boot.

The second charge of poisoning is that an attempt 166. was made, at the instance of Habitus, to poison young Oppianicus, who is now in court : that the attempt was planned for the intended victim's wedding, when a large company was breakfasting together, as is the custom at Larinum. It is alleged that when the poison was being handed to Oppianicus in a cup of honey wine, a friend of his named Balbutius seized the cup as it was passing, drank it off, and instantly dropped down dead. Now, if I were discussing these averments as if I seriously thought that I had a criminal charge to demolish, I should state the facts at length, whereas I am giving them only a hurried notice. What has Habitus ever 167. done to deserve that people should think so monstrous a crime compatible with his character? Was there any reason why he should be in such dread of Oppianicus when—even though Oppianicus had not so much as opened his mouth at this trial—my client can never want for accusers, as you will presently be made aware, so long as his mother is alive? Was it that, instead of shedding some of its adverse features, the case against him might be reinforced by a new charge? What sort of a time was that to choose for administering poison, on such a day, and before such a crowd of people? By whom, moreover, was it offered? Where was it procured? What about the stoppage of the cup? And, again, why was the attempt not repeated? There is much that might be said ; but I shall not lay myself open to the charge of having hinted at more than I am prepared to state. The facts are their own defence. 168.

My statement is that the youth in question, who, according to you, expired immediately after draining the cup, did not die on that day at all. It is a monstrous accusation, a shameless falsehood. Hear the rest of the story. I say that when he came to the wedding breakfast Balbutius was suffering from indigestion ; that he indulged his appetites too freely at the time, as young men like him will do ; and that he died in consequence after a few days' illness. Who will vouch for this ? The same individual who will vouch for his own grief—his father : the young man's father, I repeat. He who in his great sorrow might have been induced by even the shadow of a suspicion to come forward on the other side as a witness against Aulus Cluentius, is here to exculpate my client by the deposition he has made. Read it. And do you, sir, if it is not troubling you, stand up for a little, and submit to the ordeal of this painful but indispensable reference. I shall not dwell any longer on it. Your conduct has been admirable ; you have not allowed your own grief of heart to involve an innocent man in the calamity of a baseless accusation.

LXI. 169. I have still one similar charge remaining, gentlemen, which will enable you thoroughly to appreciate the truth of what I said in the beginning of my speech—that whatever misfortune Aulus Cluentius has seen during these past years, whatever anxiety and trouble he has had at this time, has been entirely due to his mother's machinations. You allege that the death of Oppianicus was due to poison given him in a piece of bread by one Marcus Asellius, an intimate friend of his, who acted, you say, at the instigation of Habitus. Now I have first to ask what motive my client had for wishing to take the life

of Oppianicus? I admit, indeed, that they had been at enmity. But it is either from feelings of fear or of ~~170.~~ hatred that men desire the death of their enemies; and what fear, I ask, could have prompted Habitus to seek to perpetrate so monstrous a crime. How could Oppianicus have been an object of dread to any one, now that he had been punished for his sins and banished the country? What had my client to fear? An attack from a ruined man? Impeachment by a felon? Harm from the evidence of an outlaw? If, again, it was because he hated his enemy that Habitus desired his death, was he such a fool as to think that the life which Oppianicus was then living was worthy of the name? Why, Oppianicus was a convict, an outlaw, severely let alone by everybody. He was an inhuman scoundrel: no one would receive him into his house, no one would go near him, no one would speak to him, no one would look at him. And was it to this man that Habitus grudged his life? If his feeling ~~171.~~ towards him was one of rancorous and heartfelt hate, ought he not to have wished his life to be a protracted one? Was it for one who was at daggers drawn with Oppianicus to hasten his death—death that in his troubles was for him the only refuge from misfortune? If he had possessed a spark of manly spirit, he would have died by his own hand, as many strong characters in like affliction have done before him; and what motive could one who was on bad terms with him have had for wishing to give him the release which he ought himself to have prayed for? As it is, I wonder what harm death has done him! It may be, indeed, that, carried away by idle tales, we are to picture him as suffering in the nether

world the punishment of the wicked, and to imagine that he has fallen in with more enemies there than he left behind him here ; that by the avenging furies of his mother-in-law, of his wives, of his brother, and of his children, he has been driven headlong into the place where the ungodly have their home. If, however, these dreams are vain, as all must know they are, what, I ask, has death robbed him of save the sensation of misery ?

172. But, again, by whom was the poison administered ?

LXII. By Marcus Asellius. What connection had he with Habitus ? None ; in fact, as he was very intimate with Oppianicus, he was more probably even on bad terms with him. Was it likely that my client would choose a person whom he knew to be, if anything, unfriendly to himself, and in very intimate relations with his intended victim, as the instrument of a crime for which he was to be responsible, and which was to put his enemy in peril of his life ? Since it is filial piety, Oppianicus, that has prompted you to undertake the present prosecution, why do you suffer this Asellius to go so long unpunished ? Why have you not followed the example of Habitus, and so secured, by the conviction of the man who proffered the poison, a previous verdict prejudicing

173. my client ? Again, how incredible it is, gentlemen, that poison should have been administered in a piece of bread ! how unusual ! how uncommon ! Could this have been a simpler process than the poisoned chalice ? Could the drug have diffused its effects more widely when hidden in a bit of bread than if it had been entirely dissolved in a liquid ? Could it have made its way into the veins and into every part of the body more quickly when taken in food than when taken

in drink? Would it be more likely, if the attempt were noticed, to escape detection in the bread than in the draught, where it would have been so mixed as to be altogether incapable of separation? "But he died a sudden death." Even had that been the case, 174. it would nevertheless, owing to the frequency of such occurrences, furnish no adequate ground at all for suspecting poison; and even if there were room for such a suspicion, it would nevertheless fall on others before my client. But it is just here that the most shameless lies are being told, as you will see if you will hear how he really came by his death, and of how thereafter a charge against Habitus was raked up by his mother.

Wandering from place to place, and finding himself 175. everywhere tabooed, the outlaw Oppianicus betook himself to Lucius Quinctius, in the Falernian territory; there his illness began, and he remained for a long time seriously indisposed. Sassia was with him. But Sassia was under the idea that the holy bands of lawful wedlock had been sundered by her husband's conviction; and she was holding closer intercourse with Sextus Albius, a lusty yeoman who used to keep company with her, than her husband, with all his looseness, could have put up with, had he not been down in the world; and much of this an admirable detective and no liar—the faithful Nicostratus, a favourite slave of Oppianicus—is said to have reported to his master. Meanwhile Oppianicus began to recover. Unable to put up any longer with the unconscionable conduct of the Falernian yeoman, he set out for Rome, where he used to have some hired lodgings outside the city gates; but falling from his horse he bruised himself terribly, it is

✓ 61

said, in bad health as he was, and died a few days after reaching the city in a fever. Such, gentlemen, are the circumstances of his death. Either they involve no suspicion at all, or, if they do, it hangs upon some domestic tragedy enacted within the four walls of his house.

LXIII. On his decease that abominable woman began at 176. once to lay plots against her son. She resolved to hold an inquest on her husband's death. She bought from Aulus Rupilius, who had been the medical attendant of Oppianicus, a slave of the name of Strato—ostensibly with the same design as Habitus had entertained when he purchased Diogenes. This Strato, as well as Ascla, one of her own slaves, she gave out that she intended to examine by torture; and she further called on young Oppianicus to hand over for like examination the slave Nicostratus, whom she suspected of having been too free with his tongue and too loyal to his master. At that time Oppianicus was only a boy; and being told that it was about his father's death that the inquest was to be held, he did not presume to raise any difficulty, though he believed the slave in question had been well disposed to his father, and was loyal also to himself. The friends and guest-friends of Oppianicus, and of Sappia herself, are called together in large numbers, respectable men, with every honourable recommendation; and in the rigid inquiry which ensues all sorts of instruments of torture are brought into requisition. Promises and threats alike were tried on the slaves, to make them say something on the rack; but I fancy it was the personal standing of the spectators,—and the intensity of the torture,—that led them to hold by the truth and to protest that they had nothing to tell. So for that day the

inquiry was adjourned, on the advice of Sassia's friends. After a considerable interval they are summoned a ¹⁷⁷ second time; the examination is begun over again, and all the most excruciating and agonising tortures are applied. Unable to stand it any longer, the witnesses expostulate. The bloodthirsty and unnatural woman was beside herself with rage at the utter disappointment of her designs; and though the torturer was wearied out—yes, and his very instruments too—she refused to desist. Then one of the spectators, an individual whom his country had honoured with high office, and who was personally a ¹⁷⁸ man of sterling character, remarked that he realised that her object was not to find out the truth, but to force the slaves to make some false deposition. With this the rest agreed, and so it was unanimously resolved that, in the opinion of the meeting, the examination had gone on long enough. Nicostratus is given back to ¹⁷⁸ Oppianicus, and Sassia herself departs with her people for Larinum, grieved at the thought that her son would now surely be beyond the reach of danger. Not even the figments of suspicion, she reflected, far less a regular accusation, could touch him; and not even his mother's secret plottings, to say nothing of the open attack of his enemies, had been able to do him harm. On her arrival at Larinum, she who had pretended that she had a firm conviction that Strato had in time past administered poison to her husband, forthwith made him a present of a shop in the town, equipped and fitted up for the practice of medicine.

✓ For two or three years Sassia kept quiet; it seemed ³ LXIV. as if she were ready and eager that some disaster should come upon her son, rather than that she was exerting her-

179. self to bring it about. In the interval, during the consul-
B.C. 69. ship of Quintus Hortensius and Quintus Metellus, when
his attention was otherwise occupied and nothing was
further from his thoughts, in pursuance of her design to
draw him on to this prosecution, and in the hope that
these matrimonial bonds, as well as the fetters of an ex-
pectant heir, would put him in her power, she betrothed
to young Oppianicus, against his will, the daughter whom
she had borne to her son-in-law. About this very time
Doctor Strato committed a domestic theft, aggravated
by murder, under the following circumstances. There
was in the house a cabinet which he knew contained a
considerable amount of coin and bullion. So by night
he killed two of his fellow-slaves in their sleep, and flung
them into a fish-pond; and then, cutting out the
bottom of the cabinet with his own hands, he removed
[one hundred and fifty thousand] sesterces and five
pounds' weight of the bullion, one of the slaves, a mere
180. boy, being privy to the deed. Next day the theft was
discovered, and suspicion was directed exclusively against
the slaves who were missing. But on noticing that the
bottom of the box had been cut out, men began to ask
by what means it could have been done; and one of
Sassia's friends recollects that he had lately seen for
sale at an auction, among other small effects, a sort of
circular saw, with teeth all round it and crooked, by
which it seemed to him that the round hole might have
been made. To be brief, on inquiry being made of the
collectors, it is discovered that the saw in question had
found its way into the hands of Strato. This aroused
suspicion; and when Strato was openly charged with the
crime, the boy who had been his accomplice took fright

and made a clean breast of the matter to his mistress. The bodies were found in the fish-pond. Strato is thrown into prison, and furthermore the money, though by no means all of it, is discovered in his shop.

A criminal investigation is instituted into the theft. 181.

What else can one suppose? Surely you don't mean to tell me that after the ransacking of the cabinet, the abstraction of the money (which was not all recovered), and the murder of the slaves, it was concerning the death of Oppianicus that the inquiry was appointed? You won't get any one to believe that. You could not have told a more unlikely story. Not to mention anything else, were three years allowed to pass after the decease of Oppianicus before the inquest on his death was held? The investigation, I say, was instituted; and what is more, Sassia, still burning with her old antipathy to Nicostratus, now again demands, quite unjustifiably, that he be given up for inquiry. At first Oppianicus refused; whereupon the woman threatened to take away her daughter and alter her will, and so, to humour the most ruthless of her sex, the most loyal of slaves was in the end simply handed over for punishment—not given up for examination at all.

Well, then, after an interval of three years, the inquiry LXV. 182 into her husband's death was reopened. Who were the slaves examined? I dare say a fresh charge was alleged, and suspicion was directed against fresh persons? No, it was another case of Strato and Nicostratus. What! had not these men been examined at Rome? Can it be that you, Sassia, with bloodguiltiness now to aggravate the madness that had always raged in your heart, after having held the inquiry at Rome at which it had been

determined, on the representation of Titus Annius, Lucius Rutilius, Publius Saturius, and the other highly respectable persons present, that, in their opinion, the examination had gone on long enough—can it be, I ask, that three years afterwards, without inviting the presence, I shall not say of any man, or you might perhaps retort that your yeoman was in attendance, but of any man with a character to lose, you attempted to make the same matter and the same persons the subject of an inquiry

183. which involved capital consequences to your son? Or do you say (for a possible argument occurs to me, though you must remember that it has not been put forward by Accius) that it was when investigation was being made into the theft that Strato volunteered some confession about the poison? This is the only chance, gentlemen, that truth and innocence have. This is how it often happens that truth raises her head out of the depths to which an unscrupulous combination has brought her down, and the defence of innocence that has been stifled breathes again. Either cunning rogues have no daring in proportion to their ingenuity, or else where effrontery is conspicuous and prominent there are no knavish arts to back it. If, on the other hand, craftiness were audacious or if effrontery were artful, they would be well-nigh irresistible. Is it not the case that the theft was committed? Why, nothing was more notorious at Larinum. Then did suspicion not attach to Strato? Why, it was the saw that bore witness against him, and, moreover, his crime was exposed by the slave who had been in the secret. Was not this the object of the inquiry? What other ground was there for holding it? Was it when investigation was being made about the theft that Strato, while on the

rack, made a statement about the poison? That is what you will have to allege: that is the story which Sassia told at the time. | Here we have an instance of what I 184. said above: the woman has audacity enough and to spare, but is wanting in judgment and tact. Several minutes of the depositions extorted at the inquiry are brought forward; they have been read aloud and communicated to you, and they are the very minutes which she said were sealed up by witnesses at the time of the inquiry. But they do not contain a single syllable about the theft. It never occurred to her first to write out Strato's deposition about the theft, and afterwards to tack on some statement about the poison which might seem not to have been elicited by direct questioning, but to have been wrung from him in his agony. The subject of the inquiry is the theft. The suspicion of poisoning had been eliminated at the previous inquiry. This was, in fact, the verdict which the woman had herself pronounced; for after deciding at Rome, on the representation of her friends, that the examination had gone far enough, she had during the three years that followed shown a fondness for our friend Strato above all her slaves, holding him in high esteem, and conferring on him every mark of favour. Well, then, when inquiry 185. was being made about a theft—and that a theft which beyond all dispute he had committed—did he never say a single word about the subject of the inquiry? Did he begin right away with a statement about the poison? If he did not speak of the theft when one might have expected him to do so, did he never, even at the end, or in the middle, or at least in some part or other of the investigation, say a single word about it?

LXVI. You see now, gentlemen, that with the same hand by which, if opportunity were given her, she would eagerly slay her son, this abominable woman drew up these forged minutes of the inquiry. And with regard to this inquiry, can you mention the name of any single individual who witnessed the sealing of the depositions? You will find no one, except perhaps a person whose character is such that I should prefer his being brought

186. forward to no name being mentioned at all. What say you, Titus Accius? Are you to come before this court with a capital charge, a criminal information, a written instrument involving the fortunes of another, without giving the name of any voucher for that instrument, of any one who sealed it, of any one who witnessed it? And will this honourable court sanction the employment of the weapon which you have drawn forth from a mother's bosom to deal destruction to an altogether guiltless son? But enough; the depositions have no weight. (As to the inquiry itself, however, why was it not reserved for a court of law? why not for the friends and guest-friends of Oppianicus, whom she had invited to be present on the former occasion? why not at least for this action?) What was done with these

187. men? I ask you, Oppianicus, to say what happened to your slave, Nicostratus. You were shortly about to impeach my client, and you ought therefore to have brought him to Rome, allowed him to give information, ay, and preserved him in safety for examination, for this court, and for this occasion. As to Strato, gentlemen, I have to inform you that he was crucified after having had his tongue cut out, as is known to every one at Larinum. It was not her own evil conscience that the

infatuated woman feared, it was not the detestation of the townsmen, it was not the public scandal. Just as if every one were not to be a witness to her crime, what she dreaded was lest a poor slave's dying words should testify against her !

Gracious heaven ! what a prodigy have we in this 188. woman ! Where in the whole world can we point to such a monster of iniquity, such a hateful and horrible abomination ? What origin could it have had ? Surely you see now, gentlemen, that it was only under constraint of the weightiest reasons that I spoke as I did of a mother at the beginning of my speech. Yes, there is no form of evil or of crime that she has not from the first desired, longed for, contrived, and put into execution against her son. I say nothing of her first outrageous amour, I say nothing of her accursed union with her son-in-law, I do not urge the fact that a mother's passion drove a daughter from her husband's arms ; all this, though it brought dishonour on the whole family, did not go so far as to put my client in danger of his life. I do not arraign her second marriage with Oppianicus, by contracting which—but not till he had given her his children's lives in pledge—she plunged her new home in mourning for the death of those who should have been her step-sons. I pass by the fact that, though she knew that it was Oppianicus who had procured the proscription and assassination of Aulus Aurius, whose mother-in-law once and whose wife but a short time before she herself had been, she chose for herself a habitation and a home in which the tokens of her husband's death and his despoiled estate would day by day be present to her eyes. My first charge relates 189.

to the crime which has now at length been brought to light,—the attempt at poisoning by Fabricius. What was at that early date matter of mere suspicion to men in general, and to my client inconceivable, now appears clear and unmistakable to all: certainly his mother cannot have been kept in the dark as to that attempt.

Oppianicus contrived nothing apart from the woman's co-operation. Had he acted alone, she would surely have left him after the detection of his design, and left him not as one separating herself from a wicked husband, but as fleeing from a most ruthless foe; she would surely have turned her back for all time upon a house that was
190. a very sink of iniquity. But so far was she from doing this that from that time forth she lost no opportunity of hatching some plot or other, devoting all her powers of thought, every day and every night, to the destruction of the son of her bosom. And first, by way of nerving Oppianicus there for the prosecution of her son, she bound him to herself by gifts and presents, bestowing on him her daughter's hand in marriage, and holding out the hope of succession to her estate.

LXVII. As a general rule, when enmity has newly sprung up among kinsmen, we see the result in divorces and the severing of relationships. But this woman thought that no one would have enough nerve for the prosecution of her son except one who had previously taken his sister to wife. People in general are often moved by newly-formed relationships to lay aside long-standing animosities; she thought that in the bond of a marriage connection she would have a pledge that
191. would give a backbone to her feud. Nor did she bestow all her pains on securing a prosecutor for her

son ; she also pondered with what weapons she could furnish him. To this end it was that by means both of threats and promises she worked upon the slaves ; to this end it was that she held those everlasting and utterly heartless inquests on the death of Oppianicus, which were at last brought to a close not by any moderation on her part but by the influence of her friends. In the same iniquity originated the inquiries held three years afterwards at Larinum ; in the same distraction of mind the forgery of the depositions there made ; in the same frenzy also the execrable amputation of Strato's tongue. She it was, in short, who found and got ready all the materials of this elaborate indictment. And after 192. despatching, thus equipped, to Rome a prosecutor for her son, she herself tarried awhile at Larinum in order to get together and hire witnesses ; but on being informed of the near approach of the defendant's trial, she hastened hither with all speed, for fear that the prosecution might fail in vigilance, or else that the witnesses might want money, or that she might perchance miss the sight that is so dear to her maternal heart,—my client's garb of mourning, and his woeful, unkempt appearance.

But what, think you, were the circumstances which LXVIII. attended her journey to the capital? I live in the neighbourhood of Aquinum and Fabrateria, and I have heard the story told by many persons. What crowds ran together in these towns! How the men hooted her, and the women too! The idea of a lady of Larinum actually setting out for Rome from the very shores of the Adriatic, with a great retinue and heavy money-bags, in order to be able more readily to com-

pass the ruin and destruction of her son when on trial for his life! There was, I might almost say, not a man among them who did not think that every spot on which she had set her foot would have to be 193. freed from pollution; not a man who did not think that the footprints of a mother so steeped in crime were a profanation to the earth, the mother of all. There was not a single town in which she was permitted to make a halt. There was not an inn of all the many upon that road where the host did not shun the contagion of her presence. She preferred to entrust herself to the solitude of night rather than to any city or 194. hostelry. And now does she think that any of us is unaware of her schemes, her intrigues, her plans from day to day? Full well we know those to whom she has made overtures, to whom she has promised money, whose integrity she has attempted to corrupt by proffers of reward; ay, and we have heard of her nightly sacrifices, which she imagines are a secret, of her impious prayers and her abominable vows, by which she makes the very gods in heaven witnesses to her crime; not knowing that it is goodness, and holy fear, and righteous prayers that avail to turn their hearts, not the defilements of superstition, or the blood of victims sacrificed for the furtherance of crime. Her rancorous frenzy I am confident the immortal gods have spurned from their altars and their shrines.

LXIX. Do you, gentlemen, whom fortune has appointed to 195. play the part of another Providence to Aulus Cluentius here for all the rest of his life, guard the person of her son from this monster of a mother. Men have often on the bench pardoned the offences of children out

of compassion for their parents: you we have to ask not to sacrifice to his mother's heartless hate the life this man has most virtuously led. Why, a whole township may be seen arrayed in evidence against her. You must know, gentlemen, that all the men of Larinum—incredible though it be, I say it in all truth—all who were able made the journey to Rome, to give my client, so far as in them lay, the support of their sympathy and their presence in force at so great an emergency. Their town has at this time been committed to the care of the women and children, and is at present under the protection, not of its ordinary defenders, but only of the general peace which prevails in Italy. And yet even they, no less than the representatives whom you see here in court, are kept on the rack day and night in suspense as to the issue of this trial. In their ^{196.} view it is not on the fortunes of a single townsman that you are about to give your verdict; it is on the standing of the whole municipality, on its credit, and the general body of its interests. Gentlemen, the defendant is conspicuous for devotion to the public good of his town, for kindness to the inhabitants individually, for righteousness and conscientiousness towards all men; and he maintains, moreover, in his own circle his high birth and the position bequeathed to him by his forefathers in such a way as not to fall behind them in worth, in force of character, in popularity, and in generosity. And therefore, in the name of the community, they pronounce his eulogy in language which not only expresses their deliberate opinion of his character, but bears witness also to their sympathetic solicitude; and while this testimonial is being read I must ask you who have

197. brought it to stand up. From the tears of those present, gentlemen, you may infer that when they adopted this motion every member of the town council was also in tears. Again as to the neighbours, how deep their devotion, how phenomenal their good-will, how intense their anxiety ! They have not sent in writing a formally adopted panegyric, but have instructed men of the highest reputation, well known to all of us, to be present here in large numbers and to bear witness in person to my client's character. Illustrious citizens of Ferentum are here in court, and men of the Marrucini, whose municipal standing is quite as good ; from Teanum Apulum and from Luceria you see honourable Roman knights come to speak his praise ; from Bovianum and from the length and breadth of Samnium most flattering panegyrics have been forwarded, and, what is more, men of the highest

198. consideration and renown have come in person. And as to the men of light and leading who have landed property, business interests, or grazing stock in the district of Larinum, it were hard to speak of their solicitude and anxiety. Few, I think, find in one the love which this man wins from all.

LXX. How sorry I am that Lucius Volusienus, a bright name on the roll of merit, is not present at this trial ! Would that Publius Helvidius Rufus, a Roman knight second to none in distinguished standing, could be here when I speak his name ! Sleepless day and night in my client's interests, while he was instructing me in the case he fell seriously and dangerously ill ; and yet even in his illness he is as anxious for the defendant's acquittal as he is about his own recovery. His evidence and testimonial will make you aware of no

less enthusiasm on the part of that excellent and honourable senator Gnaeus Tudicius. Of you, Publius Volumnius, I speak in the same expectation but with greater reserve, inasmuch as you are on the jury in this case. I assure you, in short, that the whole neighbourhood is in the highest degree friendly to the defendant. Their unanimous devotion, solicitude, and painstaking ^{199.} care ; my exertions—and I have pleaded this case from beginning to end single-handed, according to ancient practice—in alliance with the impartiality and clemency of this court, are combated by one woman, the defendant's mother. ~~X~~ And what kind of a mother? You see how she is carried along in all the blindness of cruelty and crime. No depths of dishonour have ever proved a barrier to her amours. In the depravity of her mind she has dragged in the dust all the binding ordinances of society, too infatuated to deserve the name of human being, too outrageous for that of woman, too heartless to be called mother. Ay, and she has confounded even the designations of relationship, as well as the name and ordinances of nature. Her son-in-law's wife, a step-mother to her own son, the mistress of her daughter's husband, she has, in a word, sunk so low as to have nothing left her in the likeness of humanity but her human form.

Now by your hate of crime, gentlemen, stay a ^{200.} mother's step when she would shed the life-blood of her son. Inflict on her who gave him birth the pang—strange pang it is!—of seeing the deliverance and triumph of her offspring. Deny to her mother's heart the joy of being bereft of her child. Send her away from here, discomfited by your triumphant righteousness. And again, by

that love which, if true to your nature, you have for honour, truth, and goodness, raise at length from the ground the suppliant now before you, after so many years of groundless prejudice and peril. Now, for the first time since the villainy and avarice of others fanned that prejudice into flame has he begun to take heart, and in reliance on your impartiality in some degree to breathe again, forgetting fear. His all is in your hands; many there are who desire his deliverance,
201. but you alone are able to effect it. Habitus entreats you, gentlemen, and beseeches you with tears not to sacrifice him to the prejudice which in courts of law ought to be of no avail; not to the mother whose vows and prayers you must put far from your minds; not to the execrable Oppianicus, a convicted criminal now in his grave.

LXXI. But if, for all his innocence, the stroke of some disaster lay my client low at this trial, then will he verily in his wretchedness—if indeed he continue to live, which it will be hard for him to do—frequently and bitterly lament that the poison of Fabricius was ever detected. For had it not been exposed at the time it would have been to this most miserable man, not poison, but the antidote of his many sorrows; ay, and his mother might perchance have followed in his funeral train, counterfeiting grief for the death of her son. But as it is what good will have been done, save that it will seem as if his life was preserved only for affliction out of the midst of deathful snares—only that in death he might be robbed of the
202. sepulchre of his fathers? Long enough has he been in trouble, gentlemen; the years of his suffering from prejudice are now fulfilled. No one save the mother

who bore him was ever so hostile to him but that we may believe his rancour is now fully satisfied. Do you, who are fair towards all men, who stretch out helping hands to all those that are ruthlessly assailed, save Aulus Cluentius. Restore him to his townsmen unharmed ; give him back to the friends, the neighbours, the family connections of whose devotion to him you are witnesses ; place him under an eternal obligation to yourselves and to your children. On you, gentlemen, this charge is laid : honour claims it of you, and mercy is your prerogative. With justice do we require you to deliver at last from his distresses a most worthy and altogether guiltless person, and one who to very many people is most beloved and dear. Thus will you give all men to know that, while prejudice may find a place in public meetings, in courts of law truth reigns supreme.



NOTES

§ 1. *altera . . . altera*: nominatives, 'one of which . . . while the other.' I agree with Dr. J. S. Reid, who says that 'the neatness and lucidity of the opening sentence are entirely spoiled by taking these words as ablatives.'—Classical Review, iii. (1889) p. 40.

invidia. 'Prejudice' will perhaps best render *invidia* in every context; here prejudice 'excited by' or 'on the subject of' the trial. Cp. pro Rab. Perd. § 2, *invidia vitae*, 'odium excited against him by his life.' Otherwise render 'the long-standing unpopularity' or 'the now time-honoured odium' of the trial. *Iudicium* is either 'trial,' 'law-court,' 'bench of jurors,' or 'verdict,' according to the context.

obscurare aliquid dicendo= 'to throw a cloud of words over a subject.' The opposite is *inistrare oratione*, de Or. i. § 61.—Yet Cicero afterwards boasted 'that he had thrown dust in the eyes of the jury on the trial of Cluentius,' *se tencbras offudisse iudicibus in causa Cluenti*, Quintilian, ii. 17, 21. See Introduction, p. xii.

§ 3. *sic inter vos disceptare debetis*: 'you are bound, in putting the case to yourselves,' or, 'in determining the question among yourselves.'

For *disceptare*, in the sense of discussing (or debating) a doubtful point, cp. Acad. ii. § 126, *inter se disceptare*. Zumpt's definition (quoted by Holden, de Off. i. § 50) is appropriate, *disceptare est rationes conferre et expendere, suas tueri, alienas elevare*. Probably because this meaning may have been felt to be inappropriate in the context, the inferior MSS. read *inter nos disceptare*, which would mean 'in adjudicating between us,' i.e. the accuser and me. This is by no means an impossible reading.—In view of the fact that Cicero (like other writers) frequently uses *disceptare* absolutely of the *iudices*, with the meaning 'to arbitrate,' Dr. Reid suggests to me, in a written communication, that the words *inter vos* (or *nos*)

may possibly not have stood in the original text. Cicero seems not to say elsewhere *iudex disceptat inter litigatores*, though the usage is common in later literature.

Immediately below, *a nobis* seems to be used of counsel generally (with a particular reference to the present case), not of Cicero alone; it corresponds, in fact, with the general reference in *ab oratore* above. The meaning is that while, in regard to *crimina*, a jury has to weigh the pleadings of rival counsel, and let their verdict follow the facts, condemning where no satisfactory defence has been established, they must in dealing with the more undefined *invidia* consider the question on more general and abstract grounds (*quid oporteat duci*), and in a more indulgent spirit.

fides imploranda: 'I must throw myself upon your protection.' *Fides* here not 'sense of honour,' 'feeling of duty,' but 'protection'; cp. *vestri auxilii*, § 4. So Brut. § 90, *populi Romani fidem implorans*, ii. in Verr. i. 25, *deum atque hominum fidem implorabis*, and the colloquial *di vostram fidem*. The word denotes in this connection the chivalrous protection which a sense of honour will prompt men in certain circumstances to accord. Cp. the use of *fides publica* for a 'passport.'

sine vestro ac sine talium virorum subsidio: 'without your assistance and that of your honourable court.' Some editors bracket *ac sine*, but there is no MS. authority for this, though *vestro talium* ('of such men as you') could be easily paralleled. Dr. Reid compares § 95, *sine vestra sapientia ac sine iudiciorum remediis*, and thinks that in the text the separation produced by *ac sine* should forbid us to take *talium virorum* as explanatory of *vestro* (in which case *ac* simply = 'that is to say'). 'No doubt Cicero was thinking of the new jury-courts, as in § 95.' But elsewhere we have similar instances of emphatic repetition, e.g. § 10 *pro incolumi et pro vivo*. — *Tales viri* is a complimentary expression (*hi tales viri*, § 186).

§ 4. *agitatam . . . iactatam . . . commemoratam*: literally 'turned over' (§§ 88, 139), 'canvassed,' 'brought up.' For the threefold division, Mr. Nettleship compared de Or. i. § 31, *populi motus, iudicium religiones, senatus gravitatem unius oratione converti*.

§ 5. *in opinionibus ac sermonibus imperitorum*: 'in the sayings and imaginings of uninstructed persons.' An exactly similar expression occurs in *pro Milone*, § 62.

ab ingenii prudentium repudietur: 'it should be put far from the understandings of intelligent men.' In support of this rendering Dr. Reid refers to § 201, and de Or. iii. § 3, *consilium senatus a re*

publica repudiaret. The meaning 'spurned by,' with a personal agent, is illustrated in § 122, *ab iuratis iudicibus repudiari*.

§ 6. *cor:vellet . . . labefactabit . . . extorquebit.* The significance of these words is well explained by Ramsay; but Mr. Nettleship pointed out that the first two are used as nearly synonymous in pro Rab. Perd. 3 (*cum cuncta auxilia reipublicae labefactari convellique videat*). Cp. ad Fam. v. 13, 2.

eamque animis vestris aut libentibus aut aequis remittatis: 'but will dismiss it from your minds, willingly, or at least without reluctance.' In *Mnemosyne*, xxii. (1894) p. 415, J. J. Hartman throws doubt on the construction *animo suo aliquid remittere*, in place of *ex animo dimittere*. *Remittere* ought to = $\epsilon\hat{\alpha}v$ or $\epsilon\hat{\alpha}v\chi\alpha\pi\epsilon\omega$; and on the analogy of *aequo animo fero* (not *animo meo*) he would omit *vestris*, and read *eamque animis aut libentibus aut aequis remittatis*. On this Dr. Reid remarks that it is not easy to see how the presence or absence of *vestris* affects the question whether *animis* is dependent on *remittatis* or not.

animo requiratis: 'mentally demand,' etc. Some editors bracket *animo*, but there is no lack of MS. authority for the word. '*Animo* seems quite right; no contrast with *taciti* (see Fausset) is needed, because the jurors merely note in their minds their observations on the case, and do not speak them out in the hearing of the court. *Animo* repeats the idea of *taciti*, but there appears to be no reason why it should not be repeated.'—J. S. R. The orator is asking his audience not to make imaginary corrections as he went along, but, when they came to consider their verdict, to note the absence of (*requirere*) anything he might actually have omitted, or any explanation that ought to have been given.—Some MSS. give *a me* for *animo*, and perhaps the true reading is *animo a me requiratis*.

§ 8. *ipsius criminis*: 'the charge on its merits.' Most editors bracket *veteris* and follow the best MSS. in reading *ipsius* for *istius*. A point is thus gained by the contrast between the 'actual issue' and the existing prejudice.

§ 9. *a Cluentio.* The rendering 'on the side of Cluentius' seems to suit best with *contra Cluentium*; cp. Lucret. i. 693, *Nam contra sensus ab sensibus ipse repugnat*, with Munro's note.—H. N. A similar use of the preposition occurs in § 93 ad fin., *non modo dicendi ab reo*. On the other hand, the simpler rendering 'by Cluentius' might be supported by § 30, *iudicium ab hoc non esse corruptum*, and § 63, *ab hoc corruptum non esse confitmo*.

quid res ipsa tulerit: ‘the actual facts of the case.’ Cp. ad Fam. i. 7, 6, *quid res, quid causa, quid tempus ferat tu optime perspicias*, ‘what is involved in,’ thus here ‘what lawfully belongs to the case as it really is’ (*ipsa*).—H. N.

§ 10. *nihil possit offensionis accipere*: ‘cannot sustain any reverse.’ Mr. Fausset rightly explains *offensio* here as ‘a blow in the shape of an adverse judgment.’ So *offendere* in §§ 63, 98. There is more difficulty about the use of the word in § 69, *invidiam atque offensionem timere*, where see note.

§ 11. *non ostentatione aliqua aut gloria*: ‘nor any mere braggadocio and vainglory.’ Cp. Rab. Post. 38, *quod genus tandem est illud ostentationis et gloriae*.—H. N. *Ostentatio* is the desire to ‘pose.’

inter suos: ‘in his own community,’ as again at § 196. This phrase is generally taken (along with *in primis*) as meaning that the young man was ‘pre-eminent among his fellows’; but it is much more probably a synonym for *domi suae*. Cp. pro L. Flacco, § 52, *homines apud nos noti, inter suos nobiles* (so *domi nobilis*, § 23 below); pro Rosc. Amer. § 16, *ipse honestissimus inter suos numerabatur* (where see Landgraf’s note).

§ 12. *mulieris importunae*: ‘an unnatural woman.’ *Importunus* is common in Cicero both of things and persons; Fin. i. 35; Verr. i. 8; N. D. iii. 81.—H. N. See Mr. Fausset’s Glossary (p. 278) for this word.

non solum dedecore verum etiam scelere coniuncta: ‘involving sin as well as dishonour.’ Along with Phil. iii. § 35 and v. § 20 (cp. de Or. iii. § 55) this passage seems to prove the use by Cicero of *coniunctus* with abl. without *cum*: Roby, 1216. Dr. Reid doubts the construction: ‘if all the instances of *coniungi* with abl. given by Ciceronian MSS. be carefully examined, the evidence for the construction will be seen to be far from strong, and it is assuredly not easy to explain,’ C. R. iii. (1888) p. 40. See, however, Prof. Wilkins’s detailed note at end of de Or. ii. (2nd ed.)—In § 35 below (*sceleris societate coniunctae*) the ablative is instrumental.

in omni causa: ‘throughout the case,’ the force of the phrase being repeated in *neque umquam*, etc. Many MSS. have *nominis causa*, a reading which is not without point if we consider Cicero to mean that he will always employ, ‘*for the sake of the mere name*,’ the title ‘mother,’ in order that his hearers may contrast with a mother’s love the unnatural conduct of this woman, and brand it with the censure it deserves (*quo enim . . . maiore odio dignum*

*esse ducetis).—[Possibly *ominis causa*, to avoid the omen of calling her by a bad name: cp. Sext. Rosc. § 139.—J. S. R.]*

neque umquam illa ita . . . audiet: 'nor shall she ever forfeit,' etc.
*Cp. *bene, male audire*, lit. 'nor will she so be blamed . . . as,' etc.*
cum maxime: 'at this very moment.' See note on Tac. Dial. 16. 29; and cp. Wilkins on de Or. i. § 84.

inflammata ferri libidine: 'to be carried beyond all bounds in the heat of her passion.' *Inflammata* is a nominative. 'Of course the ablative is possible, phrases like *incitatus cursu* and *incitato cursu* being frequently interchanged; see my note on Acad. 2, § 89, and cp. Att. 11, 12, 3, *erectus animo*.'—J. S. R.

Wesenberg says that Cicero always writes *efferri laetitia*, but *ferri libidine*, etc.; pro Quint. 38, *qui usque adeo fervet ferturque avaritia*; Cluent. 199, *ferri crudelitate et scelere*; cp. Auct. Bell. Alex. 20, *cupiditate pugnandi (ferebatur)*; Verg. Aen. ix. 354, *nimia caede atque cupidine ferri*.—H. N. [But *efferri* is sometimes used of the evil or criminal emotions.—J. S. R.]

non pudor, non pudicitia: 'no considerations of modesty or of her own honour.' The words *non pudicitia* are bracketed by some editors, as omitted in the best MSS. (S and T): but the collocation is frequent (e.g. pro Milone, § 77; Phil. ii. § 15), and they may easily have fallen out. *Pudor* is the feeling of modesty; *pudicitia*, the condition of personal chastity, 'purity.'

§ 14. *victrix filiae, non libidinis: 'she had conquered her daughter, but not her evil passion.'* Some editors connect these words with *noluit* in the next sentence: Kayser also rejects *non libidinis*. Dr. Reid thinks that *non* is corrupt: it 'appears to have been inserted to fill up a gap caused by some word which gave a contrast with *victrix*, possibly *serva*, for which cp. in Verr. ii. 4, 112, and ii. 1, 58.'

lectum illum geniale: 'the very nuptial couch.' In Hermathena (vi. p. 361) Mr. Lendrum points out that it is a mistake to identify the *cubile* (§ 15) with the *lectus genialis*. 'The latter was not intended for use, but stood in the atrium as a sign that the master of the house was married; Hor. Ep. i. 1, 85, *lectus genialis in aula est*. From its place fronting the entrance it was, as is well known, also called *lectus adversus*, and it was "laid anew" when a fresh marriage was contracted. Thus Cicero's words are well illustrated by Propert. 4. 11, 85:—

*Seu tamen adversum mutarit ianua lectum
 Sederit et nostro cauta noverca toro (Postgate, ad loc.)'*

nullis auspiciis: 'with no auspicious rites'; lit. 'no soothsayers.' To the passages quoted by Ramsay from Cicero and Plautus, Mr. Nettleship adds Varro ap. Serv. ad Aen. iv. 166: *Varro pronubam dicit quae ante nupsit . . . ideoque auspices diliguntur ad nuptias.*

§ 15. *in omni vita*: 'in all experience.' Tibullus ii. 1, 37, *his vita magistris Desuevit querna pellere glande famem*; Verg. Aen. vi. 663, *inventas aut qui vitam excoluere per artes*; Mart. viii. 3, 20, *agnoscat mores vita legatque suos* = human life generally. H. N.—The references in what follows are to the customs connected with the ceremony of marriage at Rome. The bride was escorted to her new home by a procession with lighted torches; and on her arrival there was lifted across the threshold—a usage which must have originated in the wish to avoid the possibility of any ominous stumble. Before the *lectus genialis* in the atrium, the bride said a prayer for married happiness; this ought to have been extremely trying to Sappho!

§ 16. 'what he could really not bear,' etc. Reading *ne quae* for the *namque* of S and T: *ne quam* is adopted from the other MSS. by Ramsay. For *probare suo iudicio* with a personal object (which Mr. Fausset questions), Dr. Reid compares pro Cael. § 73, and in Verr. Act. Pr. § 51.

§ 17. *communibus hominum sensibus*: 'the feelings common to humanity.' Cp. Cic. de Or. i. § 12, and note on Tac. Dial. 31. 24.

§ 18. *quod non totum a matre esset conflatum et profectum*: lit. 'except what was stirred up and set on foot entirely by his mother.' Immediately below ('did not the issues of this case,' etc.), the reading adopted is *sed vero sic agitur ut prorsus reticeri nullo modo possit.*

illa omnis testium copia: 'all the crowd of witnesses.' I follow Kayser and Müller in omitting *accusatio* from the text. But Dr. Reid suggests that an *et* may have fallen out before *omnis*.

§ 20. *venenum . . . quod vir matris Oppianicus ei paravisset.* The careful reader should note the boldness of this statement. The whole story of Scamander and the poison is examined in Introduction, pp. xxvi.-xxx.

diffidentem rebus suis: 'mistrusted his prospects.' — *Rebus*, 'position,' 'situation.' Caes. B. G. ii. 24, *desperatis nostris rebus domum contenderunt*; Livy v. 11, xxxvi. 31, *trepidi rerum suarum.* — H. N.

§ 21. *Asculum*, a strongly-fortified town in the Picentine territory, was captured in B.C. 89 by Q. Pompeius Strabo, the father of Pompeius Magnus.

in agro Gallico: 'in the Gallic country.' *Ager Gallicus* was the

name given to a tract of land lying along the Adriatic between Ariminum and Ancona, in which the Senonian Gauls settled after crossing the Alps. Varro, *de Re Rust.* i. 2, defines it thus: *Ager Gallicus Romanus vocatur qui viritim cis Ariminum datus est ultra agrum Picentium.*

§ 22. *quem tamen unum*, etc.: 'whom fate had seen fit to leave the one poor survivor of a numerous family.' *Tamen* is to be taken closely with *unum*, 'a poor remnant'; it was a small mercy, but the mother was grateful.

eis diebus paucis: 'a few days after that; ' *his* would be 'a few days after this.'—In § 40 Cicero says that Oppianicus poisoned Dinaea, and also altered her will in favour of his son. It is possible that in this first passage he means to hint at the villainy which he afterwards details; for the words *eiusmodi ut* (cp. § 135) seem to imply that the will was an unnatural one, and must have been due to foul play.

§ 23. *per quendam Gallicanum, familiarem suum*: 'by the agency of a Gallic friend of his own.' *Gallicanus* may possibly be a proper name. It is generally taken to denote a person 'connected with Gaul,' as the same adjective is elsewhere applied to the legions quartered there. But is it not more natural to refer it to the *ager Gallicus* spoken of above, 'by the agency of a dweller in the Gallic country'?

Aulus Aurius. If this Aurius is the same as the Aurius referred to in such disparaging terms in § 11 it is curious to note how Cicero varies his description of him. But *alterum Aurium*, § 25 below, probably refers to the Aurius of § 11, and this is a different person altogether.

§ 24. *Quintus Metellus Pius* had left Africa to join Sulla in Italy on his return from the East (B.C. 83), and helped him to victory.

§ 25. *per illam L. Sullaे vim atque victoriam*: 'in the reign of terror which marked Sulla's triumph.' For this use of *per* Mr. Nettleship compares *de Div.* ii. 27, *per somnum*; and *ad Fam.* xvi. 8, 1, *per hiemem*, 'during the time of.'—Mr. Fausset suggests that the preposition may be instrumental (like *per me licet*), 'he took advantage of the reign of terror . . . to swoop upon Larinum.'

*Quattuorviro*s: 'Council of Four.' In *municipia* these four magistrates formed a *collegium*, two of them being styled *quattuorviri iure dicundo* and two *quattuorviri aediles* (*iiii. viri A. P.* in inscriptions means *quattuorviri aedilicia potestate*). The government of *coloniae* was administered by two commissioners *duoviri iure dicundo*,

and two called *duoviri aediles*; to the former the designation *quattuorviri* was also sometimes applied.

§ 27. *remedium . . . ad moram*: ‘a method of removing the obstacle.’—For this construction Dr. Reid compares *spes ad*, pro Mil. § 5.

alter autem: ‘and the second,’ etc. There was a third by Magia, Oppianicus the younger, the prosecutor in the present action.

§ 28. *laetanti iam animo et spe optime confirmato*: ‘altogether jubilant over the happy fulfilment of her expectations.’ The whole context shows that these words must be referred to Sassia, who had previously (from interested motives) spurned the offer of Oppianicus. She expected greater wealth and happiness now that the children were away. I accordingly withdraw my previous suggestion that the phrase indicates the joy of Oppianicus at securing the woman and her money (§ 27); *laetanti* and *confirmato* being on this interpretation taken as datives in constr. with *Oppianico* (cp. for the ablative *tremerem animo*, ad Qu. Fr. i. 1, 1).—MSS. and edd. are divided between *optime* and *optima*. Dr. Reid is in favour of the latter reading. ‘*Optime confirmari spe* seems strange, and *bona, melior, optima*, are constantly found with *spes*.’

§ 29. *audiebant cum . . . graviter et diu diceretur*: ‘they heard the long and telling speech.’ Mr. Lendrum sees a very effective point in the transition to the subjunctive (*diceretur*) from *auditis cum dicuntur*, above. ‘Cicero says: “If my recital of Oppianicus’s crimes shocks you, how much more must Cannutius’s narrative have shocked his hearers? For the facts you hear from me owe nothing to my plain, unvarnished tale (*cum breviter strictimque dicuntur*); but the matter of Cannutius’s speech was heard under the influence of his eloquent and impressive manner (*cum graviter diuque diceretur*).” What in the one case is a mere temporal coincidence (indic.) was in the other an “attendant circumstance” (subj.), and the difference between the two forms is the same as between “*Fuit tempus, cum Germanos Galli superarent*” (Caes. B. G. vi. 24), and “*Fuit cum hoc dici poterat*” (Liv. vii. 32).’—Hermathena, vi. (1888) p. 359.

§ 30. *ad hanc mortem repentinam*: ‘on the occurrence of this sudden death.’—Roby, § 1824. So Dr. Reid would render, pointing out that the usual translation (‘besides,’ or ‘in addition to,’ cp. *ad hoc*) would require a verb, and also that it ‘involves an unnatural contrast between the fact of the sudden death and the signs accompanying it.’ It looks, in fact, as if some word like *manifesta* had slipped out before *fuerunt*, if *ad* was used in the sense of ‘in addition to.’ Other uses of *ad* to which attention may be directed are

‘following on’ (*ad famam obsidionis dilectus haberi coeptus erat*, Liv. ix. 7, 7), and ‘conformably to’ (*ad istam faciem est morbus*, Plaut. Cist. i. 1, 73).

§ 31. *illo poculo mortis*: ‘the deathful cup.’ This phrase has occasioned some difficulty. Dr. Reid suggests that Cicero may have written *poculo mortifero* as in Tusc. i. § 71, none of the parallels to *poculo mortis* being satisfactory.

§ 32. *per alieni corporis mortem atque cruciatum*: ‘through the death and torture of another.’ *Corporis mors* is a curious phrase, and may well be suspected: see H. Nettleship in Appendix, and Fausset’s critical note. ‘*Mortem* seems to me a specimen of a widespread class of errors; *tomenta* lost its last syllable before *atque*, then *tormen* was written *mortem* by transposition of letters. *Tomenta* and *cruciatus* are frequently joined together.’—J. S. R.

§ 34. *non longe animo prospexit*: ‘the range of Magius’s mental vision did not reach far into the future.’ That is to say, though he had foreseen what was likely to happen, he had not after all guarded against it sufficiently. ‘His utmost foresight was short-sighted in the face of such enterprising villainy.’ Fausset.—Some MSS., however, and most editors omit the *non*, and Dr. Reid forcibly remarks that ‘the emphatic *morientem* seems to lose its force if *non* be kept.’

§ 37. *obsignatores adducit*: ‘brings witnesses to seal it,’ i.e. for security. ‘*Obsignatio* was not a mere sealing, as in modern times, in attestation of a deed, but was a *sealing up* of the wax-tablets, so as to prevent their being opened and altered improperly.’—H. J. R. in Fausset: cp. Class. Review, i. p. 69. In the rest of the sentence the translation follows Kayser’s reading: *illum Asuvium appellat; testamento . . . disceditur; Avillius ipse*, etc.

§ 38. *qui tum erat triumvir*: ‘at that time one of the three Commissioners of Police.’ Q. Manlius was one of the *iii. viri capitales*, who, besides keeping the peace of the streets, were associated with the praetors in the exercise of judicial functions. ‘In criminal jurisdiction they have no independent powers; they may arrest accused persons and detain them till a higher magistrate interferes; they may entertain at their tribunal, the Columna Maenia in the Forum (near the common prison), any accusation preferred, and set an investigation on foot. This we find Q. Manlius doing in the present case.’—Fausset.

§ 39. *petulanti atque improbo scurra*: ‘a wanton and reprobate man about town.’ *Scurra*, a ‘dandy,’ or ‘town-bred fine gentle-

man' (Munro, *Catull.* p. 57), not a mere 'buffoon.' The word implies a certain amount of wit, though not of the highest order. *Verr.* iii. 146, *qui se ipsum scurram improbissimum existimari vult, qui a scurris semper potius gladiator quam scurra appellatus est.* Cp. *pro Quint.* 11 and 55; *Plaut. Trin.* i. 2, 165, *urbani adsidui cives quos scurras vocant.*—H. N.

ad eam columnam, i.e. the *Columna Maenia* in the Forum, near which the *Triumviri Capitales*, of whom this *Manlius* was one (see above), sat in judgment on slaves and the lowest class of criminals, and made the *precognitions* in cases which were afterwards remitted to a higher court.

crimen hoc Asuvianum: 'this charge in the matter of *Asuvius*.' This might be translated, 'this crime committed on *Asuvius*,' but it is much better to follow the analogy of *probare crimen*, 'to make good a charge.'

in quo adligatum Oppianici nomen primum esse constabat: 'which was held to implicate *Oppianicus* as the prime offender.' This is the reading of the best MSS. Another reading is, *inter allegatos Oppianici, nomen primum esse constabat eius quem*, etc., i.e. 'it was found that among the agents of *Oppianicus* the first name was—his own.' But this sense of *allegatus* is doubtful, and the meaning is forced.—Cp. Fausset's critical note, to which may be added the following from Dr. Reid: 'The expression *in iudicio adligari* is strange. *Nomine* may be the true reading; "by which it was made clear that he (*Avillius*) from first to last (*primum* adverbial) was implicated in the interests of *Oppianicus* (and not his own)." On the ordinary interpretation, *primum* is odd.'

§ 40. *quo curante suos omnes perdidisset*: 'whose attentions had lost her all her children.' The rendering 'by whose treatment *Oppianicus* had destroyed all his relations' would seem to require an *ille* in the Latin. On the other hand, a comparison of the facts stated in §§ 21, 22 will show that the insinuation is not to be pressed. 'When *Cn. Magius* was making his will, he showed some suspicion of *Oppianicus* (§ 34); that is all that is alleged against him with regard to the family of *Dinaea* up to the time of her death.'—Fausset.

§ 42. *Erat huic inimicus Oppianicus: erat, sed tamen erat vitricus*: 'Oppianicus, though unfriendly to him, was at the same time his step-father.'—'The emphasis on the second *erat* seems false: "he was an enemy, he *was*." Surely Cicero must have written *vitricus* before *sed tamen* as well as after it, just as he writes

mater below both before and after *at*. The second *erat* may be a distorted remnant of *vitricus*.—J. S. R.

§ 43. *Venerai*: 'servants of Venus.' The worship of Venus in her temple on Mount Eryx, on the N.W. coast of Sicily, was kept up by a number of persons of both sexes, who had further to administer the landed property belonging to the foundation, and who seem to have been at least one degree removed from a state of slavery.

§ 46. *splendor*: 'shining merit.' Cp. note on § 198. Immediately below, the words *quam prope aequabilis* 'have much appearance of being a gloss on *quam fere omnium*, etc.'—J. S. R. Similar glosses may be discoverable in § 39, *pecuniam ab eo accipit*; § 53, *tam abditum*; § 83, *qui pecuniam dederant*.

§ 47. *non ignobili et spectato homine*: 'of no mean standing and personally a man of repute.' The best MSS. (S and T) have *non ignobili sed*, for which *et* has been substituted, *set* and *et* being often interchanged by copyists.—'Sed is better omitted with Müller; explanatory clauses with some case of *vir* or *homo* in apposition to a word in a preceding clause generally stand without a conjunction.'—J. S. R.

venenum diebus paucis comparatur: 'the poison is got ready in a few days.' This is the reading of the best MSS. The translation given of the text (especially *pecunia obsignata quae ob eam rem dabatur*) is intended to accord with the view of the whole circumstances adopted in the Introduction (p. xxvii. *sqq.*), to which reference must be made. The Scamander incident constitutes one of the greatest difficulties in the whole speech, and it is hard to believe that Cicero is giving a perfectly straightforward account of the transaction.

§ 50. *Venenum esse deprehensum*: 'poison was discovered.' Pluygers proposed to omit these words, which he regarded as the gloss of some scribe who had misunderstood the phrase *tribus verbis* immediately preceding. *Tribus verbis* is sometimes used colloquially for 'a couple of words,' as we might say: see Plautus, *Mil. Glor.* 1020. But in the text it is no doubt to be taken literally,—in fact, so literally that it is doubtful whether Cannutius was in a position to put his case more forcibly than he does in the words *Venenum esse deprehensum*. From the account of the Scamander incident given in the Introduction (p. xxvii.) it will be seen that it is uncertain whether it would have been in strict accordance with fact to say that the poison was discovered *on the person of Scamander*. If the general terms of the indictment were deliber-

ately adopted, we may compare what may be a similar artifice in § 65, where see note, *ad fin.*

§ 51. *profiteri . . . quod non possim*: 'to profess what I cannot perform.' All MSS. except S and T insert *implere* after *possim*. Dr. Reid thinks this is clearly wrong; but as an infinitive of some kind is needed, he would suggest *perficere*. The *im* of *implere* may have come from *possim*; *plere* may have survived from *pficere* (*perficere*).

§ 54. *advocahat*: 'he beat up his supporters.' *Advocare* here does not necessarily mean 'to act as advocate,' by giving advice on points of law, etc. The substantive *advocatus* has also the more general meaning of 'backer,' and is applied to any one who, by attending in court, lends his countenance to a friend. Cic. Phil. i. 16, *Vellem adesset Antonius modo sine advocatis.* Dem. de Cor. 275, 20, *οἱ ἐκ παρακλήσεως συγκαθήμενοι.*

§ 56. *voluit cognoscere*: 'he wished to find out whether,' etc. For the rendering here given of *essent* and *iudicarent*, see note on § 106.

laudatoribus: 'testimony.' Over and above evidence directly bearing on the case, it was allowable for a defendant to produce witnesses to his general character (*laudatores*), with the view of influencing the jury in his favour.

§ 57. *oratores etiam auctoritatem praestare debent*: 'a pleader must lend the weight of his moral influence as well.' For this use of *auctoritas* cp. § 6.—Dr. Reid doubts this interpretation, and would prefer to seek an explanation of the passage in a contrast between *patronus* and *oratores*, the higher class of speakers. 'These are bound when they take up a case to guarantee the benefit of any moral weight they may possess to their clients; therefore they will have nothing to do with a thoroughly bad case; and so the litigant has recourse to the mere *patronus*.'

§ 58. *ut quamquam sedulo faciebat . . . videretur*: 'in such a way that though he was really doing his best,' etc. 'The story reminds one of the mishaps narrated by Quintilian in vi. ch. 1.'—J. S. R. If *sedulo* ever meant 'designedly' in Cicero (as Liv. xxviii. 15), the other reading, *hoc quādquam sedulo faciebat . . . videbatur*, would give a good enough sense; 'though in doing so he spoke advisedly'—i.e. quite unconscious that his arguments made against him instead of for him—'he seemed at times,' etc. It is more probable, however, as Mr. Fausset suggests, that the insertion of *hoc* is due to some copyist who was unfamiliar with the absolute use of *sedulo facere*;

videretur would then become *videbatur*.—Professor Wilkins (on de Or. iii. § 158) refers to Bücheler (Rh. Mus. xxxv. 629 f.; cp. Stolz,² p. 268; Brugmann, Gr. § 81) as supporting the old view that *sedulo* is for *se* (=sine) *dolo*.

§ 59. *de illo loco Respicite iudices*: ‘his brilliant *Turn now, gentlemen.*’ Dr. Reid compares with this what Quintilian says of such set forms in vi. 1.

Fabriciorum damnatione: ‘in condemning Fabricius and his accomplice.’ As only one of the brothers was alive at the time of the events which Cicero is narrating (§ 47), it is evident that he uses the plural here to include Scamander, who as *libertus* of the Fabricii might take the family name. So also § 62 below.

§ 61. *Tum vero illa iudicia senatoria*, etc.: ‘This would have rendered the old senatorial monopoly of our law-courts entirely indefensible.’ This passage is discussed in the Introduction, p. xli.

Nempe quod . . . voluisset: ‘Why, on the charge, they would say, of having tried,’ etc. Madvig’s emendation *voluit* (with *Equivid* following, instead of *Quid*) seems to rest on an exaggerated appreciation of *concinnitas* or symmetry. The subjunctive may be explained by taking the sentence as the rejoinder made by the jurors and *adopted by the speaker*: ‘he had tried, as was alleged,’ etc. This makes it unnecessary to take the words *nempe . . . voluisset* (with Mr. Roby) as Cicero’s answer, not that of the jurors.

§ 63. *qui sibi alia ratione diffideret*: ‘who had no other resource to trust to.’ A few MSS. have *aliqua* for *alia*; this might be rendered, ‘who had some reasons for mistrusting his chances.’

§ 64. *Unum quidem certe*, etc.: ‘There is one point,’ etc. For the fallacy underlying the argument in this section, see Introduction, p. xxxii., with note.

§ 65. *Negate, inquam, meo loco*: ‘deny it, I repeat,—you have my leave to interpose a statement to the contrary.’ *Meo loco* (‘though it is my turn,’ J. S. R.) is given by the best manuscripts; the alternative reading, *in eo loco*, ‘where you sit,’ may be defended (cp. § 54, *hoc ipso in loco*, § 168, *ex illo loco*), though, as Madvig says (Opusc. i. 122), *ex isto loco* would be preferable if the meaning is *in eo loco ubi sedes, ut ne consurgendum quidem tibi sit*. As in pro Rosc. Am. § 73, *meo loco*=*etsi meus dicendi est locus*; cp. Dem. de Cor. § 139, *νῦν δειξάτω ἐν τῷ ἐμῷ ὕδατι*. Dr. Reid cites also pro Dom. § 82, *ne meo loco censor in senatum legeret*, ‘when my turn came.’ *In eo loco* could not mean ‘while I am discussing the topic,’ as some have taken it; on either reading the

orator is inviting the other side to do what they could do only by his permission, viz. to interrupt his speech at once with a denial if they thought they could disprove what he was saying.—The general terms in which the challenge is couched (the words immediately above, *ad corrumpendum iudicium*, being omitted) should be carefully noted. It looks as if Cicero knew that the other side would not be able to deny the fact that money had been put at the disposal of Staienus, while he was not anxious to give them any opportunity of responding to his challenge by specifying the purpose for which it was alleged to have been given (*ad conciliationem gratiae*, § 84).

§ 66. *fautore cupidio*re: 'a more interested support.' This is certainly the meaning of *cupidus* here; 'biassed,' 'partial.' Cp. pro Caecina, § 8, *cupidior quam sapientem iudicem esse aequum est*; *testis cupidus*, de Or. ii. § 229; pro Font. § 21; and so in Vatin. § 40, *cupidissime falsum testimonium dicere*; and *cupiditas* for 'partisan spirit,' in Verr. a. p. § 35; pro Plancio, § 43.

§ 67. *acrioribus remediis*: 'more drastic measures.' Opp. to *leniora*; Celsus, vi. 6, 14, *acria medicamenta* opp. to *lenia*; ib. vi. 6, 1, *minus acrem curationem*.—H. N.

§ 69. *praeter se*: 'except myself.' This rendering may be taken as reproducing the effect of 'vivid construction' with *possit*, which seems undoubtedly to be the authoritative reading here, not *posset*.

invidiam atque offendionem: 'unpopularity and discredit.' *Offensio* does not here mean 'reverse,' 'rejection,' as at § 10; the words form one of Cicero's double phrases, and there is a similar collocation in Verr. ii. § 137, *invidiam atque offendionem suscipere*.

§ 70. *miserrimis in locis et inanissimis*: 'in his wretched, poverty-stricken lodgings.' This reading, though awkward, seems nearest the MSS. T has *miserrimus*, and Classen brackets the *et*. Baiter and Kayser give the ingenious reading, *miserrimus in loculis ante inanissimis*, *loculis* being a conjecture of Ernesti. This might be rendered, 'and seeing, poor wretch that he was, such a large sum of money in his hitherto poverty-stricken coffers.'—'The not very uncommon employment of *foci* for a single house suggests that *locis* here may be a corruption of *focis*.'—J. S. R.

praecipitatem igitur impellamus, etc.: 'Well, he is tottering on the brink, let us tip him over.' Cp. pro Rab. Post. § 2, *satis est homines imprudentia lapsos non erigere*; *urgere zero iacentes aut praecipitantes impellere certe est inhumanum*. Oppianicus is, as it were, on the 'brink of ruin' (*praecipitatem*), and Staienus proposes to 'give him a push' (*impellamus*, Tac. Ann. iv. 22). *Perditum*

prosternamus may be compared with *urgere iacentes* in the parallel passage given above: Oppianicus is already ‘done for,’ but he may as well receive the *coup de grâce*. Dr. Reid remarks that the phrase is a variation on *perditum perdere* (Fam. xiv. 1, 5).

§ 71. *ut erat semper praeposterus atque perversus*: ‘with his usual wrong-headedness and reversal of the proper order of things.’ Ramsay gives an apt illustration: “If a dog were to come into a room tail foremost, this would be described by the epithet *praeposterus*, if he were to come in sideways, by *perversus*.” What follows requires explanation. *Bulbus* literally means ‘onion.’ Now onions had no place in the *promulsis* or *gustatio* of a Roman dinner—the mixture of shell-fish, eggs, fruit, etc., which was taken before the banquet as a relish or stimulant to the appetite;¹ see Petronius 33, with Friedlaender’s notes (pp. 209-212). So to make a start with ‘Mr. Onion’ was a very ‘wrong-headed’ proceeding on the part of Staienus; it was (as with Professor Ramsay’s dog) a case of *posteriora priora*!—I transcribe an interesting note by Mr. Lendrum (Hermathena, vi. p. 362): ‘That the onion had its own place on the Roman *menu* appears from Hor. S. ii. 4, 58—

*tostis marcentem scillis recreabis et Afra
potorem cochlea,*

where *scillis* seems wrongly explained as a fish by Orelli and others; the word means “onions”; cp. Plin. 19. 30, 5 [§ 93], *bulborum nobilissima est scilla*—*exacuendo aceto nata*, and Theocr. 14, 17—

βολβός τις (?) κοχλίας ἐξαρέθη· ἡς πέτρος ἀδύς.

Thus Staienus is “*praeposterus*” because he begins (*prae*) with the *Bulbus*, which properly comes after (*post*) dinner. Probably the *bulbus* was introduced “*inter scyphos*” from Greece, and it should perhaps be added to the “*rosae et unguenta*” as a feature of the “*Commissatio*” or “*Graecus mos bibendi*” by Monimsen-Marquardt, s.v. *cena*. In Athenaeus, ii. 64-9, *βολβός* and *κοχλίας* are repeatedly mentioned as *διεγερτικοί*, and some verses are there quoted from Philemon, *περὶ τῆς τῶν βολβῶν σκευασίας*, which, after mentioning *δέος* among the numerous dressings suitable to the *βολβός*, conclude with the line—

αὐτὸς δ' ἐφ' αὐτοῦ στιν πονηρὸς καὶ πικρός.

These words are a good comment on the passage of Cicero immedi-

¹ The constituent parts of the *promulsis* were not the same at all periods, as the well-known passage in Martial about the lettuce shows.—J. S. R.

ately following: “conditor totius negoti Guttam adsparget huic Bulbo. Itaque minime *amarus* visus est (Bulbus).”

Guttam adsparget huic Bulbo: ‘goes on to sprinkle a drop of Gutta-seasoning on his vegetable friend Bulbus,’ *i.e.* associates Gutta with Bulbus (‘Messrs. Onion and Cruet’) for the purpose of his plot. ‘In *guttam adsparget* there is an allusion to the use of some sauce by which the natural bitterness of some *bulbi* was mitigated. Cp. Pliny, N. H. 19. 97 (of *bulbi*), *amaritudo plerisque in vertice est, media eorum dulcia.*’—J. S. R. I have rendered *conditor* ‘contriver and cooker-up,’ to indicate the double-meaning (*condere—condire*): Staienus was a ‘master of the art of salad-dressing.’ Cp. Juv. 14. 8, *boletum condire*.

ex imaginibus Aeliorum: ‘from the illustrious house of the Aelii.’ *Imagines* properly denotes, as is well known, the waxen images of ancestors which stood on either side of the atrium in a Roman noble’s house, and which formed a conspicuous feature in funeral processions.—In a learned note, Mr. Lendrum objects to the view of Mommsen and Marquardt (adopted by Mr. Fausset) that the *stemma*, or ‘family-tree,’ was indicated by lines drawn between these various *imagines*, instead of being, as it more probably was, a regular genealogical chart—‘This view is inconsistent with the ancient authorities. Suet. Galb. 2 says, “imperator *stemma* in atrio proposuerit, quo paternam originem ad Jovem, maternam ad Pasiphaen referebat.” Surely Galba did not pretend to have masks, *expressi cera vultus*, of Jove and Pasiphae; the death of the former at least is not recorded. Nor can this account be borne out by the “*loci classici*” on the subject, Plin. 35. 6, and Seneca *de Ben.* 3. 28, 2. In the former passage the “*stemmata*” are distinctly contrasted with the “*expressi cera vultus*,” which “*singulis disponebantur armariis . . . stemmata vero lineis discurrebant ad imagines pictas.*” The “*stemma*” was probably a genealogical chart (cp. “*generis tabula*,” Juv. 8. 6), and Pliny seems to describe it as “laid out with lines to illustrate or correspond to (*ad*) the painted wax *imagines*” (“*pictos vultus*,” Juv. 8. 2), *i.e.* it was a sort of key to the “*imagines*” in the atrium. So Seneca (“*imagines in atrio exponunt, et nomina familiae suae longo ordine ac multis stemmatum illigata flexuris in prima parte aedium collocent*”) distinguishes the “*imagines*” and the “*stemmata*,” and explains the origin of the latter term from the painted garlands which illuminated the chart. Seneca expressly states that it was the “*nomina*” which were festooned. The “*imagines*” themselves

seem only to have received garlands on special occasions; Mur. § 86 “laureatam imaginem” seems to imply that the decoration was exceptional’ (Hermathena, vi. pp. 360-1). [Mr. Lendrum does not refer to Suet. Ner. 37. where the *imagines* are not contrasted with, but wrapped up with the *stemma*. In that passage *stemma* is the equivalent of the whole of the *imagines*, as it is in Mart. 4. 40. For *linea*, cp. Stat. Silv. iii. 3, 43, *gentis linea*.—J. S. R.]

nationis magis quam generis . . . cognomine: ‘a tribal rather than a family surname.’ Staienus had the impudence to call himself C. Aelius Paetus Staienus. Cicero hints that when he ‘adopted himself’ (Brutus, § 241) into the Aelian family he was careful to choose the cognomen Paetus instead of Ligur—both being names of branches of the family—lest it should be thought that he belonged to the barbarous tribe of Ligurians. Cp. pro Sest. 69, of Sextus Aelius Ligus, *qui cognomen sibi ex Aeliorum imaginibus adripuit, quo magis nationis eius esse quam generis videretur*.—*Magis* is the reading of the best MSS.; others give *magis suae*. Most editors regard *suae* as superfluous; but Mr. Lendrum (Hermathena, vi. p. 363) thinks that it may be ‘an instance of that idiomatic use of “suus” which appears in Propert. ii. 9, 30: “aut mea si navis staret in oceano,” “if I had a ship moored.” Cp. Hor. Epod. i. 26, “aratra nitantur mea,” “plough of mine,” and Ov. Am. 3, 7; “meus campus.” So here “nationis *suae*,” “a race that was his.” This use of the possessive adj. is suited to the hypothetical form of the sentence.’

§ 74. *sine illo*: ‘without Staienus.’ Mr. Lendrum may be right in thinking that there is more point in the alternative reading *sine Aelio*. ‘Cicero is quoting the words of Cannutius, who would naturally speak of his client Staienus by his new aristocratic title.’

§ 75. *Consurgitur in consilium*: ‘the jury rise to retire.’ This phrase seems to prove that the jury had an opportunity of discussing their verdict. [It is possible that *ire in consilium*, etc., is merely a technical phrase for proceeding to give votes (without consultation); this view is suggested by pro Caec. § 29, and some other passages. I do not remember to have met with any passage where consultation is explicitly mentioned. The *praetor* is sometimes said *ire in consilium*, as well as the jury.—J. S. R.]

nummarii: ‘venal,’ rather than ‘pensioners,’ as Fausset. According to Cicero they had only been promised money; cp. § 78, *pecunia omnis*.

in campo: ‘at political elections,—held in the Campus Martius.

§ 76. *re illa incognita primo condemnare*: ‘without further inquiry to vote right off for a conviction.’ *Primo* here is in contrast with *paulo posterius patetfacta re*, § 106. They wished for an opportunity of learning the facts at a further hearing of the case (*ampliatio*), and then they might have voted ‘Guilty.’—*Primo=prima actione*; cp. *Verr.* ii. 1. § 26, *non primo iudicare opp. ampliare*; and *Livy* xlivi. 2, 6, *bis ampliatus, tertis absolutus est reus*.—H. N.

non liquere dixerunt: ‘held the charge *not proven*.’ For the manner of voting at Rome, see Mr. Reid’s note on *pro Milone*, § 15.

Nonnulli autem severi homines, etc. : “Certain austere persons again,” etc. Hartman thinks this sentence is corrupt (cp. Fausset’s crit. note), and there is certainly some awkwardness in *statuerunt* after *possent . . . vellent* above, in the use of the imperfect *putabant* after *statuerunt*, and in the repetition of *oportere*. He proposes to read ‘*Nonnulli autem severi homines hoc statuerunt, quo quisque animo quid faceret spectari, et, si alii pecunia accepta verum iudicabant (iudicarent?), tamen nihilo minus se superioribus suis iudiciis constare oportere; itaque damnarunt.*’—*Mnemosyne*, xxii. (1894) p. 420. Dr. Reid thinks that *etsi . . . iudicarent* may be right, and that the verb may have been assimilated to *putabant*. There are many parallels in texts to this.

§ 77. *causam illam totam deposcere*: ‘to demand an investigation into the facts.’ Dr. Reid suspects the true reading to be *denuo poscere*: cp. § 182.

§ 79. *Lucius Quinctius* was counsel for Oppianicus, but the phrase *causam agere* seems here to allude to his proceedings out of court. Cp. *haec tum agente Quinctio*, § 108.

§ 80. *At tum si dicerem non audirer*: ‘But if I had been speaking in those days, I should not have been listened to.’ This use of the imperfect is common; Roby, 1530 c., ‘of a continuous state supposed, contrary to the fact, to have existed in past time’; Madvig 347 b. Obs. 2, ‘when one may imagine a repetition of the thing asserted (e.g. in attempts) or a continuing state.’ Similarly Phil. 8. 4, *Num igitur Opinium, si tum essem* (‘suppose you had lived at that time’), *temerarium civem aut crudelem putares?* pro Rab. Perd. § 15. *Sed moreretur prius acerbissima morte miliens C. Gracchus quam in eius contione carnifex consisteret*: *Tusc.* i. § 90.

non quod alia res esset: ‘not that the case was different,’ subjunctive of the untrue reason, Roby, 1744.

§ 81. *ut ne eripi quidem pecunia posset*: ‘and so not even

bribery could have saved him.' Mr. Fausset is wrong in stating that the order of the words is against this rendering. *Quidem* qualifies not *eripi* only, but the whole phrase. 'It is true that *quidem* does, as a rule, refer to the word it follows, but there are exceptions; and in particular the tendency to place only *one* word between *ne* and *quidem* is so great that sometimes compound phrases to which *ne . . . quidem* refers are intersected by the *quidem*,' Dr. Reid in C. R. (1889), p. 41; cp. his note on Acad. i. § 5. So Tac. Germ. 16, 2, *ne pati quidem inter se iunctas sedes*. Mr. Lendrum cites § 107, 'where to translate *ne* is *quidem* *absolvit* by *not even he* *acquitted* would produce nonsense.'

ipsam multitudinem . . . pertimescebam: 'the many charges . . . were enough in themselves to fill me with apprehension,' *ut nihil opus esset pecunia* (above). Even from the point of view of Oppianicus, Cicero says, the prosecution had no motive for resorting to bribery.

§ 82. *tabulas*: 'account-books.' The examination of accounts that had been kept 'in a most business-like fashion' (*diligentissime*) may have furnished a more genuine proof of innocence than might appear at first sight. Where a sum of £5440 was concerned it would not be altogether easy to account for disbursements on bribes under the head of ordinary expenditure. 'It was considered a great disgrace for a Roman paterfamilias not to keep his accounts carefully,' Wilkins on de Or. ii. § 97 (*q.v.*)

vobis ducibus: 'under your guidance.' This is the reading of most recent editors, though the two best MSS. give *vobis iudicibus*. Ramsay followed Classen in rejecting *ducibus* for a reason that is no reason: it is, he says, 'a reading which, at first sight, seems appropriate, since it keeps up the metaphor. But, upon reflection, it will be seen that Classen is right, for in no way could the jurors be said to be leaders or guides in an investigation the mysteries of which were to be disclosed to them by the orator himself.' A similar difficulty has driven Mr. Fausset to adopt the conjecture *indicibus*, referred to below. But long ago Mr. Davies pointed out (Hermathena, 1876, p. 409) that *vobis* does not mean the jury-men; it means 'you, the prosecutors and your party, you are our guides; you managed your little game in such a bungling way as to lead us straight into the beast's den, without any trouble of sniffing about for smells, or looking for traces.' Mr. Lendrum compares § 163-4 (*vobis isdem patronis . . . annos octo meditati accusatores*), 'where *vobis* also refers to the prosecutors, and the concluding

words precisely correspond with *anni octo sunt cum ista causa in ista meditatione versatur*.' There is thus no necessity for Mr. Nettleship's conjecture (Journ. Phil. No. xvi. 1879) *vobis iudicibus*: he compared *sine ulla duce, sine indice*, Verr. ii. 1. § 105.—[*Vobis* no doubt means the prosecutors, yet *iudicibus* may be right. The words may mean that Cicero is ready to take the judgment of the prosecutors on the facts; cp. *illis ipsis iudicibus* in § 134, and *te iudice* addressed to the opposing counsel in Caecin. § 38, also *ib.* 48, *de vi te ipsum habebo iudicem*. The appeal *quid voltis amplius?* seems to make in favour of this interpretation. It is addressed to the jury who have to make a decision, in Sext. Rosc. 32. and elsewhere.—J. S. R.]

§ 83. *qui pecuniam dederant*: 'those who had given the money,' i.e. according to your argument. Dr. Reid doubts the value of Classen's emendation (*qui* for *cui*), which is, however, adopted by Kayser, who also continues the interrogation to *effectum est*. It is possible (as is suggested by Hartman, *Mnemosyne l.c.*), that the phrase has crept into the text from the margin, where it had been added by some scribe in the sense of *quos vos pecuniam dedisse arquitis*. The antithesis *Clientius, Cannutius* (*Oppianicus, Quinctius*) is fully as good without it.—The change from *cum in consilium iretur* to *cum . . . mittebant*, Mr. Lendrum attributes to the 'same desire of variety which leads Cicero in § 113 to write *in quemquam* and *Fidiculanio*.' There is more emphasis in the second form of the question, though the two forms are practically equivalent.

§ 84. *ad conciliationem gratiae*: 'for the purpose of arranging an amicable compromise.' The alleged object was, in fact, to make up the quarrel between Clientius and Oppianicus.

Sapientissimum esse dicunt, etc. : 'There is a common saying,' etc. Cp. Hesiod, Works and Days, 293 *sqq.*

sive . . . admonitus: 'or, if you like, the hint was given him.' I omit the words which occur in some MSS. after *admonitus, istam dedit conciliationis et gratiae fabulam*. See Fausset's critical note, on which Dr. Reid observes: 'The objection to *dare fabulam* is unfounded; see Tusc. i. 3, where the phrase is used of the author. It may well apply to him who brought the present farce before the public, although he had borrowed the idea. The expression *excogitavit sive admonitus* seems incomplete without another verb. At the very least *ipse* would be required after *excogitavit*. For *conciliationis et gratiae* I would read *conciliatae gratiae*

(cp. Mil. 21). The *et* is a development of the final *e* of *conciliatae*; *conciliata* was then adapted to the context. The words in § 86 are more appropriate if the mention of a farce be kept here.'

§ 85. *adversarium removere*: 'to get rid of an opponent.' Probably for the aedileship, for which Staienus was at present a candidate (§ 69). Cethegus wanted him to be convicted and so got out of the way.—*Si fuit* = 'if' (as I grant) Cethegus showed a want of principle in this, *I explain his conduct* by his desire to be rid of an opponent.—H. N.

§ 86. *Ille cum re premeretur*: 'in his really desperate plight.' Dr. Reid thinks that *re* should go out. It may have come from above, *recenti re cum faucibus premeretur*.

Reading *Qui enim . . . cum Oppianico Cluentius? qui cum matre?* See Fausset's critical note.

§ 89. *Non modo causae, sed ne legi quidem*, etc. : 'So far was the tribune from allowing any grace in the action that he did not even defer to the provisions of the law.' Quintius neither granted the ordinary 'respite' allowed a defendant to get up his case (said to have been generally ten days), nor did he observe the law which forbade a *iudex quaestionis* being brought to trial during his year of office.

Similarly Mr. Fausset: 'So far was the tribune from making any allowance for the necessities of the action that he would not respect those of the law itself.' *Causae*, 'the case of his adversary'; *legi*, 'the particular law which defined the rights of a *iudex quaestionis*.' Mr. Fausset objects, however, to assuming any kind of zeugma with *quidquam laxamenti datum est*. The phrase *dare laxamentum* is common in Livy, and the meaning 'he allowed no respite in the case' is obvious enough. But if the same meaning applied with *legi*, the idea would be 'he allowed no respite in the law,' whereas what is implied is that the law was broken. It seems, therefore, either that *causae* and *legi* are not direct datives after *datum est* ('he allowed no interval either for the preparation of the case or for the due observation of the statute'), or else (more probably) that *laxamenti* is differently applied to the two substantives, as indicated in the translation given in the text. Quintius, in fact, *pressed on* the action, and *strained* the law. His conduct, so far from being *merciful*, was not even *just* or *legitimate*.

§ 90. *exspectasset*: 'he ought to have waited.' See Mr. Fausset's note. By waiting, Quintius could have brought his action under the *Lex Cornelius*.

§ 91. *subsortitionem eius . . . non haberet*: 'had no note of the appointments made by Junius to casual vacancies in the panel of jurors.' The process of *subsortitio* was conducted in each case by the *iudex quaestionis* with the authority of the city praetor (cp. on § 103). Sometimes it was the challenging (*reiectio*) of prosecutor and defendant that had brought down the jury below its proper number; but in the trial of Oppianicus some other cause had probably intervened not long before the end of the case. Junius was charged with having chosen Fidiculanus out of the regular order (§ 103); and he was suspected generally of having selected such persons as would be ready to vote for the conviction of Oppianicus (§ 113). Verres had either not been consulted at all in the matter, or else disowned the proceeding, nor was there any entry in his books regarding it; and as the newly-appointed jurors seem all to have voted against Oppianicus, it was held probable that they as well as Junius had been bribed by his accuser. In his impeachment of Verres (ii. 1. § 158) Cicero directly accuses him of having been in league with Junius, and says that, fearing to suffer his fate, he afterwards falsified his official lists. Here he seems only to insinuate that the fact that no note of the *subsortitio* could be found in his books was not to be wondered at considering the kind of man he was.

§ 92. *ratio iudicii*: 'the motive of his trial.' Cp. $\eta\tau\bar{u}\delta\gamma\bar{w}\bar{o}\sigma$ $\pi\rho\alpha\lambda\bar{p}\bar{e}\sigma\bar{u}\sigma$ (Demosthenes), and *ratio accusationis*, § 19.

Non opinor ex iis rebus quae gestae sunt rem ullam potuisse mutari: 'I do not believe it possible that any change can have occurred in regard to any essential feature of the transaction.' This sentence is perhaps rather more difficult than it looks. It is, of course, Cicero's own reply to the question which immediately precedes (cp. *mutari* with *mutata est* above, also with *alia nunc ac tum*), and is meant to prepare the way for the statement which follows about the change which had occurred in the interval in regard, not to the 'essential facts of the situation,' but to the 'surrounding circumstances.' In effect, it is equivalent to the previous utterance about the 'causa Cluenti' (§ 80): *causa enim manet eadem quae mutari nullo modo potest: temporis iniquitas atque invidia recessit*.

§ 93. *Gradus Aurelii*. The 'Aurelian Staircase' was in the Forum.

§ 94. *C. Orchivius* was Cicero's colleague in the praetorship (§ 147).

Faustus Sulla. Sulla the dictator, the father of Faustus, had done all he could to curtail the powers of the tribunate: see on § 110. These powers were restored in the consulship of Pompey and Crassus (B.C. 70); but we have in the attempt to raise the action referred to in the text an indication that, though Sulla himself had now been dead twelve years, the tribunes still bore a grudge against the son of the man who had robbed them of their rights.—[The attack on Faustus Sulla was rather a part of the general democratic policy, of which Caesar gave some excellent illustrations in his praetorship, than special vengeance connected with the tribunate.

—J. S. R.]

§ 95. *P. Popilius Laenas* (consul B.C. 132) had made himself conspicuous by prosecuting those who had abetted Tib. Gracchus in the struggle to carry his measures of reform. Accordingly, Gaius Gracchus in 123 brought in a law that was obviously directed against him, and he immediately retired into exile.

Q. Caecilius Metellus Numidicus preferred to withdraw into exile (100 B.C.) rather than submit to the indignity of taking an oath by which the demagogue Saturninus, who was countenanced by Marius, sought to secure the ratification of an agrarian law which he had proposed to the senate.

§ 96. *sive quod ex lege subsortitus iudicem non esset*: 'or else had not conformed to law in filling up a vacancy on the panel of jurors.' The singular *iudicem* is defended as generic: Müller refers to Flacc. § 18, *non iam est mihi contentio cum teste* = 'with witnesses.' But, on the other hand, Falcula may have been the only juror introduced into the *consilium* by *subsortitio* (cp. Introd. p. xxxvii.), and the singular noun may refer specifically to him.

§ 97. *Adde . . . ut intelligas.* Dr. Reid thinks the phrase a strange one, and suggests that *Adde* may be a corruption of *Addo*.

At hoc obfuit ei maxime: 'But still it told heavily against him.' By *hoc* is meant the suspicion that Bulbus had been mixed up in the bribery scandal at the trial of Oppianicus.

§ 98. *qui accusati sunt*: 'Why, they were prosecuted,' etc. In view of what he considered the want of some connecting link between the two clauses beginning with *qui*, Mr. Nettleship proposed to substitute *quia* for the second *qui*: *qui causam de ambitu dixerunt [non de iudicio corrupto] quia accusati sunt*, etc. (Journ. Phil. vol. viii. No. 16). But it is better to take the second *qui*, with Mr. Lendrum (Hermathena, vi. p. 358), as an instance of the use of the relative to introduce a refutation; cp. Phil. ii. § 14 (*cuius*

etiam familiares, etc.), § 27, and § 71.—At the same time, it must be noted that the recurrence of *qui* three successive times (with *quos* immediately following) seems harsh, though Dr. Reid thinks that parallels might easily be found. I would suggest a full stop at *dixerunt*, and then *At qui accusati sunt* in place of *qui accusati sunt*.

ambitus: ‘corrupt electioneering practices,’ or more generally the ‘giving of money for an unlawful purpose.’ *Ambitus* does not seem to have included the taking of a bribe by a juror; hence the clause below *quos ego non idcirco . . . pecuniam accepisse*. That offence came properly under the statute ‘*De Repetundis*,’ or the *Lex Cornelia de Sicariis* (cp. note on § 148), neither of which offered such *praemia* as are referred to below. Mr. Lendrum explains the argument as follows:—‘Accius had argued: Popilius and Gutta, who were convicted of *ambitus*, owed that conviction to the *invidia* arising from the bribery at the trial of Oppianicus. Cicero denies this, maintaining that they were really guilty of *ambitus*; and this he proves by appealing to the character of their accusers, who, having themselves been convicted of *ambitus*, were anxious to retrieve their position by conducting a successful prosecution for the same offence. Is it likely then, asks Cicero, that these persons would have been admitted to the *praemia legis*, unless they had satisfied the object of that law by making good their charge of *ambitus*?—Hermathena, *l.c.*

The whole passage may be one of those in which Cicero is endeavouring to ‘throw dust in the eyes of the jury.’ There was probably some technical reason which saved Popilius and Gutta from being brought to trial under any other statute. We have the limitations of that section of the *Lex Cornelia* which treated of ‘judicial circumvention’ detailed in ch. 54; and from § 104 (*qua lege in eo genere a senatore ratio repeti solet*) it would appear that there were similar restrictions to the operation of that part of the statute *De Repetundis* which seems to have dealt with corruption on the part of jurors.

in integrum restitutos: ‘were restored to their civil rights.’ Quintilian (v. 10, 108) takes the restoration to civil privileges of the accusers in this suit, who had themselves been condemned for *ambitus*, as the *signum* that Popilius and Gutta were prosecuted for *ambitus*, and not for judicial corruption.

quod alios reprehendissent: ‘having brought others to book.’ Mr. Nettleship translates, ‘having publicly shown their disapproval of,’ quoting a parallel use of *reprehendo* in *pro Fonteio*, 3 (Journal

of Philology, *l.c.*) The word seems to mean to 'rebuke by bringing to trial,' to 'pull up,' 'bring to account.'

§ 99. *Mam. Aemilio.* This was M. Aemilius Mamercus Lepidus, consul B.C. 77, and proconsul in Italy in the year following, when Staienus was his quaestor.

§ 101. *nummarius interpres . . . non probabatur*: 'there was something unsatisfactory about,' etc. *Probabatur* has here the meaning 'did not appear plausible,' as also in § 61: *illum expertem eius consilii fuisse non probabatur*. The jury did not think it likely that such a person as Staienus would have been selected to carry through the negotiations for a compromise. The 'theory would not hold.'

§ 103. *Ergo adhuc . . . video*: 'So far, then, I find,' etc. *Adhuc* has its proper meaning. For the collocation cp. de prov. cons. § 42, *Ergo adhuc magis est mihi verendum ne . . .*; pro. Mil. § 52, *video constare adhuc, indices, omnia*: in the latter passage *video* is followed lower down by *videamus*, as here *videamus ecquod aliud iudicium*; cp. pro Rose. §§ 92, 95.

Fidiculanus Falcula. Cicero has elsewhere (pro Caecina, §§ 28, 29) committed himself to another view of this man's conduct.

cum praesertim: 'though indeed.' See note on Quintilian, x. § 105.

contionibus . . . seditiosis et turbulentis: 'factious and violent harangues.' Mr. Fausset, in his Glossary, includes this passage among those in which *contio* has undoubtedly the meaning 'public meeting,' e.g. §§ 2, 93, 95; and Dr. Reid points out to me that in the four other passages of the speeches where *turbulenta contio* occurs the meaning is 'meeting.' But elsewhere (ad Att. iv. 3, 4) Cicero uses *turbulentus* of harangues, and the ablative here is instrumental; contrast § 113, *at in contionibus omnibus a L. Quinctio vehementer erat et saepe vexatus*. If further proof is needed of the correctness of the above rendering, it may be supplied from Quint. v. 13, 39, *Presserat enim turbulentis contionibus Cluentium Quinctius*.

non suae decuriae munere: 'when the duty did not devolve on the decury to which he belonged.' For the exercise of their judicial functions senators (who had a monopoly of the *iudicia* from B.C. 81 to B.C. 70) seem to have been divided into as many decuries as there were *quaestiones*, and one decury seems to have been annually assigned to each *quaestio*. When, from any reason whatever, a place or places on the bench became vacant, a *subsortitio* had to

be made (from the decury proper to the *quaestio*) by the *iudex quaestionis*, on showing cause for so doing to the city praetor, and then it was open to any one interested to make objections. In this particular case the complaint against Junius was, as we have seen (*vide* note on § 91), that in impanelling Fidiculanus he had made an irregular selection (as Fidiculanus did not belong to the decury which was to serve in the *quaestio de beneficis*), and that he had neglected to consult the city praetor, on whose register the name of Fidiculanus ought to have been entered. The phrase *decuriae iudicium* is said to have originated at the period when the *Quaestiones Perpetuae* were first established. Ten jurors seem to have been selected from each tribe, making a total of 350 liable to serve; and this formed the *Album Iudicum Selectorum*.

Causam nusquam Staienus, etc. : 'whose case was never tried,' etc. The text is here corrupt: various attempted emendations will be found in Fausset's critical note. Dr. Reid regards the sentence *Non . . . iudicandam* as complete in itself, *accipere* being used without *pecuniam* of receiving a bribe, as in § 75 and elsewhere: so Fr. 'toucher.' Hartman (*Mnemosyne, l.c.*) thinks that whatever may have fallen out after *ob rem iudicandam* the general sense of the passage is clear. The important point lies in the first and last words *non numero hanc absolutionem* and *proprium crimen illud quaestio eius non fuit*: i.e. the fact that Fidiculanus was acquitted on that occasion cannot benefit Cluentius, because he had not been charged with taking a bribe from Cluentius. Then there follows immediately *Fidiculanus quid fecisse dicitur? Accepisse a Cluentio HS cccc*, where Hartman suggests that the words *Sed altero iudicio* must have fallen out before the name. Cp. § 103 above, *Uno iudicio multa est ab eo petita sicut ab Iunio, quod non sua decuriae munere neque ex lege sedisset*: it was at the second trial (*altero iudicio*) that he was charged with taking a bribe from Cluentius.

§ 104. *HS cccc*: 'four hundred thousand sesterces,' ten times as much as Oppianicus wanted to give to each juror (§ 87). The number is probably corrupt, but we have here a hint of the real truth. The correct reading may be *HS 1200*, which would = *HS quinquaginta milium*. Oppianicus commissioned Staienus to offer forty thousand sesterces to sixteen jurors: Cluentius gave fifty thousand to seventeen. Cluentius was doubtless guilty of bribery as well as Oppianicus, and his success was probably owing to the fact that he offered more than his opponent. 'We must contrast,'

says Mr. Fausset, 'what Cicero said in the pro Caec. § 28. He is disparaging the value of Falcula's evidence. When he gave it, he was asked how many miles (*quot milia*) Caecina's farm lay from Rome; and on his replying *minus 1000*, "less than fifty miles," with a roar of laughter the audience cried "*ipsa esse*," "the exact figure." "For they remembered," Cicero says, "how much he had received in the iudicium Albiniianum." [The figures 1000 are not quite certain in Caec. § 28. They are due to Keller, the MSS. all (or nearly all) giving *Liii*.—J. S. R.]

Qua lege, etc. : 'when impeached under the statute,' etc. 'This seems to imply that only senators were liable under the Lex [Cornelia] de Repetundis, the existing statute on the matter. So also the words at the beginning of § 148, where Cicero says that if T. Accius (an *eques*, v. on § 62) were impeached under this law, he would protest, *se lege pecuniarum repetundarum non teneri*. . . . But this certainly does not hold in regard to the whole *lex de repetundis*. . . . It is therefore not unlikely that, as Mr. Peterson conjectures (n. on § 98), the application of *those sections* of the law *de repetundis* which related to judicial corruption . . . was confined to senators, which would be analogous to the similar limitation in the case of the sixth chapter of the Lex Cornelia *de sicariis*.' Fausset.—On this Dr. Reid remarks that '§ 148 must be read with § 145, *si senator iudicio quemquam circumvenierit*, etc. In considering liability under the *leges repetundarum*, a distinction must be drawn between the primary proceedings and the secondary (*lites aestimatae*). In connection with the latter, any one, official or not, who had corruptly touched money in conjunction with the principal culprits might be attacked when the inquiry was made *quo ea pecunia pervenerit*. This was so even under the early statutes (Rab. Post. §§ 8-10). The lex Julia gave an enumeration of those liable under the primary proceedings: *Lex Julia repetundarum pertinet ad eas pecunias quas quis in magistratu potestate curatione legatione vel quo alio officio munere ministeriove publico cepit, vel cum ex cohorte cuius eorum est*, Dig. xlvi, 11, 1. It is reasonable to suppose that a great deal of this was taken from the earlier statutes. Rab. Post. § 12, to which Fausset refers, is not so important as § 17.'

Adducti iudices sunt: 'the court was brought to believe,' etc. That *adducti* is the true reading here (for *adducti ad iudicandum*) is made perfectly plain from the analogous passages in de Fin. i. 5, 14 (where see Madvig's note), and ad Att. xi. 16, 2. Similar

examples of brachylogy are not uncommon. Cp. de Oratore, i. 25, 115, where we have *ita dico ut . . . possit* for *ita dico ut dicam . . . posse*; ad Att. xi. 16, 2 (where see Tyrrell and Purser, vol. iv. p. 250), and Tac. Ann. iv. 57, *plerumque permovere num verius sit*, etc.—‘Similar and still stranger ellipses are found in the poets: Lucr. iii. 765, *Scilicet in tenero tenerascere corpore mentem Confugient*; ii. 1128, *fluere . . . manus dandum est*; Plaut. Mil. ii. 3, 61, *me homo nemo deterruerit quin ea sit in his aedibus*; Ovid Fast. 5, 74, *hinc sua maiores tribuisse vocabula Maio tangor*; Plaut. Epid. iv. 1, 22, *si ego te novi, animum inducam ut noveris*. Really similar is de Or. ii. § 138, *describunt . . . positas esse* for *ita describunt ut dicant positas esse*.’—J. S. R.

sed si aliud is iudex, etc. : ‘but that even if the said juror had known nothing at all,’ etc. This seems to be a fair statement of fact. In such a case the *praeiudicia* might fairly be allowed considerable weight, in default of any opportunity of hearing evidence and listening to counsel. The *subsortitio* had often to be resorted to in the course of an action, and a juror so introduced into the *consilium* was evidently expected to give his vote with the rest. The odium against Falcula was due to the suspicion that either Junius, by neglecting to consult the city praetor, had failed to give the usual security against intrigue, or else that Verres had himself connived at the appointment of a venal juror.

§ 105. *rumusculos*: ‘futile twaddle.’ For the diminutive, see Nägelsbach, p. 185.

Si qui quaereret: ‘if you had asked them.’ For this use of the impf. subj. cp. note on § 80, *tum si dicerem non audirer*. Here it occurs alongside of the plpf. passive, *si essent rogati*.

§ 106. *lenem . . . vehementissimum esse*: ‘that he is lenient . . . but most rigorous. . . .’ *Esse* alongside of *constitisse* need not occasion any difficulty. ‘That the present infin. denotes the *permanent characteristic*, and is not at all a poetical use, appears from the cognate passage in § 56, *voluit cognoscere utrum iudices essent severi, an etiam consilia conscientiasque suppicio dignas iudicarent*: “whether juries (not ‘the jury’) are strict, or whether they *consider* design and complicity,”’ etc.—Mr. Lendrum (Hermathena, vi. p. 364). Dr. Reid says: ‘*esse* may mean *was and still is*, i.e. with regard to this particular case, not with regard to all cases.’

paullo posterius patefacta re: ‘when the facts should shortly afterwards be brought to light.’ Contrast *primo*, § 76, where see note. The language is intentionally misleading. No further hearing of

the case ever came on : Cicero only means that *if* it had come on they would have voted guilty. He wishes to get all the benefit he can out of the *Non liquet* vote, and has already implied that those who recorded that verdict were really convinced of the guilt of Oppianicus (*ceteri nocentissimum esse arbitrabantur*, § 75).—If, as the context seems to indicate, the nine names which follow are those of the jurors who said 'Not proven,' the vote must have been carried by eighteen against fourteen (nine for 'not proven,' and five for acquittal) ; and it then becomes difficult to reconcile this passage with the statement in the *pro Caecina*, 29, that the issue depended on a single vote. The passage in the text is generally taken as referring to those who voted 'Guilty' ; but this view is not supported by the context. Possibly Cicero may be quoting a certain number (*longum est de singulorum virtute ita dicere*) of names from the list both of those who voted *non liquet* and of those who gave a direct verdict of guilty : but the recurrence of *sapientiam* (§ 106) and *sapientes* (§ 107) is against this : see Introduction, pp. xxxiii.-xxxix.

§ 107. *quae, quia cognita sunt*, etc. : 'familiar as they are to all, they stand in no need of any flowers of rhetoric.' This translation gives the sense ; but the looseness of the construction ought to be noted. It were tedious, Cicero says, to complete the enumeration, *and to say things which* are so familiar as not to require any rhetorical embellishment.—Madvig corrects *ita* to *illa* ; Dr. Reid suggests *ista* ; others bracket *ita*, and read *cognita est* and *quaerit*.

§ 108. *qui distulit* : 'he who deferred judgment,'—*qui non liquere dixit*. By voting 'Not proven' a juror virtually demanded a further hearing of the case (*ampliatio*).

§ 109. *Quod erat odium* : 'What a nuisance he was !' Cp. the common phrase *odio me enecas*, 'you are boring me to death ;' and see Tyrrell and Purser's note on 'odiosae epistolae,' Cic. ad Att. viii. 14, 1 (Correspondence, vol. iv. p. 88).

§ 110. *locum illum, post adventum L. Sulla* a tribunicia voce *desertum* : 'the well-known spot which, since the advent of Lucius Sulla, the tribune's eloquence had forsaken.' There is some difference of opinion as to the exact character of the restrictions imposed by Sulla on the privileges of the tribunate. As regards their legislative functions, he had hampered them by an enactment (made during his consulship of 88 B.C.), forbidding them to propose measures without the previous sanction of the senate. In his dictatorship he also 'restricted their wide powers of interference

(*intercessio*) to their original purpose of protecting individual plebeians' (Pelham, *Outlines*, p. 213).

§ 111. *illam . . . purpuram*: 'that gorgeous purple robe.' As aedile or praetor, Quintius would be entitled to wear the 'Toga praetexta,' which was the badge of all curule magistrates at Rome; and with such distinctions to boast of, he thought he could afford to look down on those who had cultivated him when tribune, and by whose help he had risen to a higher office.

§ 113. *eos . . . qui*. For the plural, see *Introduction*, p. xxxvii. with the note.

iam putabitur aliqui: 'that it is credible that some one,' etc. This is Kayser's emendation: S T have *putaretur*, which Mr. Fausset inclines to defend, by supposing a suppressed protasis (*si haec ita essent*), and comparing *necaretur*, § 45. He translates: 'it follows that some one might have been thought (by the jurors who acquitted him) to have honestly condemned Oppianicus, although he did not sit from the beginning.' Dr. Reid says: 'The thorough parallelism of the clauses with *iam* shows that at least an indicative verb is needed. *Putaretur* may have arisen by the coalescence of some part of the verb *putare* with a present passive; possibly *iam*, *puto*, *videtur* may be the true reading. This kind of error is common in MSS. So e.g. in Pl. Mil. 1022, *properando* for *propera expectando*, or something of the kind. Similarly in Fam. iii. 3, 1, *Fabianus* for *Fabius Virgilanus*. Acad. 2. § 70, all MSS. *facerent* for *facere dicerent*.'

quaero quis sit nocens? 'who, I ask, is guilty?' This is the reading of most edd.; but Mr. Fausset defends *qui sit*, the reading of S and T, where *qui*, he says, 'gives a sense sufficiently distinguishable from that of *quis*: "I ask" not "what" but "what sort of juror" is guilty, "where are we to look for a guilty juror." Cp. Acad. ii. § 9, *statuere qui sit sapiens vel maxime videtur esse sapientis*. See Reisig, Lat. Synt. ed. by Schmalz and Landgraf, n. 356.

aliquid fuisse: 'that there was some particular element,' etc. This use of *aliquid* for *quidquam* has given rise to some difficulty, and *aut quidquam* readily occurs as an emendation (so Madvig: *aliud quidquam*, Mr. Davies). But *aliquid* is quite supportable: 'Cicero is thinking of a definite statement that there was *something* different; this he denies. See collection of exx. of *aliquis* in negative sentences in Reisig-Schmalz-Landgraf, n. 356.'—J. S. R. The change from *in quemquam* to the dative (*Fidiculanio*) in what precedes does not seem to offer any serious difficulty.

§ 114. *ambitus*: 'corrupt practices.' See on § 98. Ramsay's statement is that 'a person accused of *ambitus* was charged with having *given* money for an unlawful purpose—one accused *de repetundis* of having *received* money unlawfully.' [This is too general. The word *ambitus* is connected only with giving money to attain to *public office*; to receive money to put a man into office seems never to have been criminal.—J. S. R.]

§ 115. *litem eo nomine esse aestimatam*: 'a separate charge was made on this head in assessing the amount he was to refund.' The *litis aestimatio* was 'the process by which, in the case of certain offences in which the punishment admitted of as many degrees as the offence, all the details of the penalty were adjusted; on what score (*quo nomine*) compensation was to be made, to what persons, in what amount.'—Fausset. Entries might also be made implying offences different from those which had been directly alleged and proved against the defendant; these might form the subject of investigation before another *quaestio*.¹ Moreover, others might be incriminated, and afterwards brought to trial on the charge referred to in the 'assessment'; e.g. those who had been guilty of receiving misappropriated moneys, *ad quos pervenisse pecunias in litibus aestimandis statutum sit*, § 116.

The opposite side had cited the *litis aestimatio* in the case here referred to as having the binding force of a previous legal decision. Cicero acquiesces in the allegation that the court took Scaevola's conduct at the trial of Oppianicus into account in assessing the damages when he had been found guilty of malversation (*litem eo nomine esse aestimatam*). But he shows from analogous cases that if Scaevola had been brought up subsequently on a charge founded on that assessment he would in all likelihood have been acquitted; and he therefore contends that such assessments cannot have the force of precedents.

In making the assessment, the jury, he says, are disposed either to leniency, in order to avoid the appearance of further hostility towards one whom they have already made their enemy, or else to carelessness, because they imagine they are now well through with

¹ Cp. Ps. Asconius on Verr. Act. i. 39, *qui ambo peculatus damnati sunt. Quid hoc, inquiet quispiam, ad iudicium corruptum pertinet? Respondebimus, litis aestimationem [fieri] non solum ex titulo propositi criminis, sed etiam ex aliis probationibus, quae ex ante actis rebus apud iudices constiterint. Hi, peculatus crimen proposito, etiam quas iudicando pecunias ceperant reddiderunt.*

the real business of the court. Thus the assessment is not made out with the same scrupulous accuracy as is shown in the trial itself. This being so, even in cases when a graver charge (e.g. *maiestas*) has been admitted into the assessment (being a different charge from that on which the defendant was originally brought to trial), a court of justice often refuses to convict a man when subsequently brought to trial on this graver charge, thus plainly showing that it does not regard such assessments as precedents.

The reading adopted by Classen from S and T *quibus . . . lites maiestatis essent aestimatae* (where the force of the subjunctive must be brought out by some such translation as 'in many cases where, as often happens, a defendant,' etc.), gives an excellent sense; and there does not appear to be much point in Ramsay's objection. The orator does not go on to give what 'far from being an illustration of the careless leniency of jurors, would be rather a proof of vindictive persecution.' He simply says that it is well known that jurors are not as scrupulous as they might be in assessing damages. They are lenient or careless, or both together; and so (*itaque*) in cases when a *lis capititis* has been admitted, a court of justice generally refuses to convict in any trial subsequently arising out of such assessments.

Scaevola was found guilty on charges having nothing to do with that of taking a bribe in the capacity of juror (*aliis criminibus*), as he was alleged to have done at the trial of Oppianicus. This would have been a capital charge, and it was this assessment involving his civil status (*lis haec capititis*) that his enemies succeeded in getting entered in the *aestimatio*. According to in Verr. i. 13, 38, he was convicted *de pecuniis repetundis*—i.e. for malversation or extortion; and Cicero says that if the *lis capititis* had had the binding force of a judicial precedent he would afterwards have been brought to trial under the Lex Cornelia de Sicariis (*hac lege ipsa*).

ceteris iudiciis: 'the other parts of an action-at-law.' There is a difficulty here. Pluygers corrected the text to *cetero iudicio*, and Kayser adopts this reading. Perhaps we may explain 'all other trials'='trials generally,' as distinguished from the *litis aestimatio* which follows; cp. *ceteri*, §§ 28, 32 *ad fin.* Dr. Reid thinks that *ceteris* may be a gloss.

§ 116. *Si quae in illum lis capititis illata est*: 'any capital charge which it may be proposed to make an element in the assessment.' [*Lis capititis* does not seem to occur elsewhere. It appears to indicate a *new* criminal element, not connected with the original charge.

For *illata* cp. *inferendis litibus* in Rab. Post. § 9. To Fausset's list of passages add a curious fragment of the oration against Clodius and Curio (26 in Müller) : *at sum, inquit, absolutus. Novo quidem hercle more, cui uni absoluto lites aestimatae sunt.*—J. S. R.]

§ 117. *cum huiusce periculi tum ceterorum quoque*, etc. : 'the danger in which my client stands has not kept me from remembering,' etc. The best MSS. give *cum huiusce periculo ceterorum quoque*, which Mr. Fausset would render 'that I may be held to have fulfilled my other obligations *at the peril of my client.*'—*Periculum* refers to the danger of conviction (*sine huius periculo*, § 118), just as *salus* frequently denotes deliverance from that danger, or acquittal.

summa . . . consuetudo : 'the closest intimacy.' This is the reading of the best MSS., and has been unnecessarily altered to *necessitudo est* or *necessitudo*. '*Summa consuetudo* is quite a strong enough phrase to express the closest intimacy, as a glance at Mer-
guet's Lex. s.v. *consuetudo* will show.'—J. S. R.

§ 119. *hominibus ignominia notatis* : 'men who have been branded with it,' i.e. the censorial stigma.—*Ignominia* is not (as Fausset's note seems to imply) technically used of the *censoria subscriptio*. The sentence therefore seems to require *hac* before *ignominia*. Cicero is careful to put in the pronoun below, *haec ignominiae causa*, i.e. this kind of *ignominia* as opposed to others.—J. S. R.

§ 123. *illum dictatorium*, i.e. 'the pen with which the dictator made out the lists of the proscribed.' Some MSS. insert *gladium*; but for the double meaning of *stilus* (pen, dagger) cp. Phil. ii. § 34, *si meus stilus ille fuisset, ut dicitur, non solum unum actum sed totam fabulam confecisset*; Hor. Sat. ii. 1, 39.

§ 125. *sive voluntas sive opinio fuit* : 'whether it represents their personal sympathies or merely their impressions.' *Voluntas* ('what the censors chose to think') is a stronger word than *opinio*; but neither is as strong as *iudicium*, or even *sententia*. *Opinio* and *voluntas* are conjoined also in pro Domo, § 32; cp. *iudicium an voluntatem*, Verr. ii. § 175.

§ 126. *aerarium reliquisse subscripterunt* : 'notified that they had disfranchised.' The alternative reading is *aerarium reliquissent*, which would be equivalent to *aerarium fecissent*. See Mr. Fausset's notes, on which Dr. Reid observes, 'Probably when the censors disgraced a man by issuing this order (*equum vendere*) they commonly went a step further and made him an *aerarius*, but some additional

pronouncement would be needed for that end,' C. R. (1888), p. 41. And in a further communication to me, Dr. Reid says: 'To leave among the *aerarii* a man who possessed the qualifications which would lift him above that class, but for the adverse opinion of the censors as to his character, would be a stigma, and would necessitate an explanation by the censors of their reasons. On the score of sense there seems little to choose between *reliquissent* and *reliquisse subscripterunt*; the latter reading expresses the reading more fully, but the *subscriptio* is implied by the other lection.'

§ 127. *Quid est hoc?* 'What is the meaning of this?'—What follows should be printed *duos esse corruptos solos pecunia dicant: ceteri videlicet gratis condemnarunt*. Dr. Reid thinks that *dicant* must be wrong after *Quid est hoc?* which calls for a definite statement in the indicative.

Aut illud adferant, etc. This is a very difficult passage. The MSS. give *Aut illud adferant aliquid esse quod de his duobus habuerint compertum de ceteris comperisse*, which has been emended into *Aut illud adferant aliquid sese quod de h. d. h. c. de ceteris non comperisse*. For reasons given below I reject the *non*.

With *sese* and *non* the passage is thus explained: 'the censors must tell us (*dicant*, above) that *two only* were guilty, or else they must allege (*adferant*) that *two at least* were convicted of a charge which they were not able to bring home to any of the others. For (*nam illud*) a third alternative supposition is untenable, viz. that they proceeded by the analogy of military *decimatio*.'

This gives sense, but the second alternative does not appear to be very striking. It is not a strong challenge to the censors to ask them to make the negative statement that they found no proof against any except Aquilius and Gutta. And if this be the meaning it would be nearer the MSS. to read *Aut illud adferant aliquid esse quod de h. d. h. c., de ceteris comperisse nihil*. (*Nihil* may easily have fallen out before *Nam illud* following.)

But after *Aut illud adferant* a stronger challenge is to be expected. 'The censors must either acquiesce in my statement (*Duos solos video*, etc.) that "only two persons were concerned in the scandal under discussion," or else they must make the averment that they have (since? *iam* before *comperisse*, in place of *non*?) ascertained some fact implicating the others.' This is a challenge to the censors to prove that the offence for which they had branded two of the jurors had been shared in by the rest who voted for a conviction; in which case alone could their action be cited in proof

that the verdict against Oppianicus had been procured by bribery. If they cannot do so, the inference will be that the rest were innocent.

I therefore reject the *non* which Graevius was the first to insert before *comperisse*, and which Mr. Fausset adopts. But as some emendation is necessary, I venture to suggest that *esse* may have arisen out of *necesse est*, and that the text should run *Aut illud iam adferant necesse est aliquid quod de his duobus habuerint compertum de ceteris comperisse*. Lentulus and Gellius were out of office now, but the challenge could be addressed to them as individuals.

Dr. Reid has favoured me with the following : 'In the sentence beginning *Duos solos* the emphasis seems to lie strongly on *solos*, and this makes in favour of omitting *non*. But attention may be drawn to the vagueness of the word *adfinis*, which covers mere suspicion as well as guilt ; also to the words *in culpa ac suspicione* above. Cicero may be trying to prove that every shred of suspicion concerning those *not notati* should be put away ; inserting the *non*, and giving *compertum* its full force, we should get a sense in agreement with this. The point was an awkward one to treat ; that may be why Cicero drops it so quickly for a third alternative. But he gets back to it at § 131, where he uses the sweeping words *nihil cogniti, nihil comperti*. I am on the whole inclined to think that the reading *sese . . . non comperisse* is right.'

§ 128. *ut . . . sortito in quosdam animadverteretur* : 'that . . . punishment should be inflicted on a certain number drawn by lot'—generally one in ten (*decimatio*), as by Appius Claudius in the Volscian war, B.C. 495, and by Apronius in the war against Tacfarinas (Tac. Ann. iii. 21). Sometimes one was chosen in every twenty (*vicesimatio*), or one in every hundred (*centesimatio*).—Hartman doubts the Latinity of the phrase *flagitium rei militaris*, and thinks the last two words are a gloss. But Dr. Reid points out that, as = *f. in re militari admissum*, the phrase is not unlike *pro Flacco*, § 5, *Hispaniae, Galliae, Ciliciae, Cretae . . . vitia et flagitia = v. et f. in Hispania, etc., admissa*. Cp. also *virtus rei militaris*, *pro Mur.* § 22.

in delectu dignitatis : 'in bestowing official preferment,' i.e. in appointing persons to the exalted rank of senator.

amplior mortis et supplicii metus : 'the fear of capital punishment in all its terrors.' *Amplior metus* is a 'more comprehensive' fear, i.e. a fear that extended to every soldier, and not to one in ten only, as did the punishment. Before the fact, this punishment was threatened to all who should not stand to their posts, though after

the fact the *sortitio* mitigated its severity. Others explain *amplior* as = 'stronger than his ordinary fear of meeting death on the battle-field.'—*Qui . . . deliquerat* is the reading of S T, first restored by Classen, and seems to give the sense imperatively required by the whole passage. "For a soldier who *has deserted* his post" (*tenuit*, perfect) . . . "may be afterwards, nevertheless, a better soldier, etc. Therefore if a man *had behaved badly* in war from fear of the enemy, our forefathers held before him a *greater fear*—that, namely, of punishment and death," etc. The point of the passage is that the decimation takes place after the act of cowardice, in order to punish a few by death, and the majority *by the terror of death*; *amplior metus* being the agony of fear endured by the soldiers while waiting to see on whom the lot will fall. This fear, and the sight of their comrades' punishment, will act both as a punishment for the past and a deterrent for the future. But (he says) there is no real analogy between the soldier who has once shown the white feather and the juryman who has once given a corrupt verdict; the one may retrieve his fault, the other is so tainted as to be unfit for public life.'—H. N.

The other reading is *ne . . . delinqueret*: 'he who fights and runs away may live to fight another day'; but to deter him from such unworthy conduct a 'comprehensive' fear of death was ever before his eyes, though, as a matter of fact, punishment was inflicted only on a few.

§ 129. *fidem . . . commutarit*: 'has bartered his honour.' Dr. Reid suspects *commutarit*, and would read *contaminarit*.

magister veteris disciplinae et severitatis: 'the high priest of this long-established and rigorous system,' or (as Fausset) 'a graduate in the stern school of ancient virtue.' *Disciplina* and *severitas* are often conjoined; Acad. 2. § 64; pro Milone, 6. § 14; Tac. Dial. 28. 11, and 24; Germ. 25. 7.

§ 130. *notatione tabellarum*: 'the marked voting-tablets.' In B.C. 75, when the *iudicia* were still in the hands of the senate, Cicero's rival Hortensius had, at the trial of his kinsman Terentius Varro, distributed among the bribed jurors voting-tablets privately marked, so that he might know whether they had kept their pledge (Div. in Caecil. § 24; in Verr. i. § 40).—Cicero says in the text *paucis postea mensibus*: from which we are perhaps to infer that the scandal had not come to light at once.

illa iudicia: 'the senatorial courts,' the courts as formerly constituted, i.e. while they were still in the hands of the senate.

§ 131. *cum . . . dixerunt*: ‘when all the time,’ etc. Müller and Fausset seem to be right in adhering to the MSS. *dixerunt*, in place of *dixerint*. Here *cum* = ‘at the time when’ (Madvig, § 358); cp. Div. in Caec. § 69.—The phrase *homines sapientissimi iudices* is remarkable, and the simplest explanation might seem to be to construe *iudices* as a vocative. But the apostrophe does not seem to be altogether in place, and I prefer (with Dr. Reid) to take *iudices* as emphatic = *cum iudices essent*.

§ 132. *Negat hoc Lentulus*: ‘Lentulus takes an opposite view.’ This is an over-statement; Lentulus agreed in removing Popilius from the senate, but he justified his action in a different way. His *subscriptio* (which the other side had founded on as a *iudicium*, cp. *condemnat*, *iudicat*, above) was to a different effect.

cetera ornamenta: ‘the insignia of his office.’ See Fausset’s note.

§ 133. *putarunt . . . non potuisse*: ‘they thought it was impossible.’ Mr. Fausset follows Madvig in reading *posse* for *potuisse*. Dr. Reid would prefer to change *putarunt* to *putant*, making it parallel to *existimant*.

§ 134. *Publius Africanus*, the younger, censor in B.C. 142.

si hoc Habito facere licuisset: ‘if Habitus had been treated in the same way,’ i.e. had had a censor like Africanus, and had not been censured when there was no evidence forthcoming against him. Mr. Fausset explains *hoc facere* here as *τοῦτο πάσχειν*. I had previously translated ‘if H. had had the same opportunity,’ i.e. had been accorded the privileges of defending himself. But Sacerdos had not defended himself, and there is no previous verb of action for *facere* to take up.

A different view of the passage is put forward by Dr. Reid, in the following note: ‘If the words are sound, they must mean (literally) “if an opportunity had been afforded of doing this to Habitus,” i.e. if the censor had granted an opportunity (according to Scipio’s example) for any one who pleased to bring a charge against Habitus; then Habitus could easily have secured an acquittal. *Hoc facere* is to be explained by *si qui contra vellet dicere*, above. For the dative with *facere*, ‘to do a thing to a person,’ see the exx. given by Madvig in n. on Fin. ii. § 79. I once thought the right reading to be *Quod* (pronoun) *si in hoc H.*, etc., which would give the same sense, but it is not so easy to refer *Quod* back to *contra dicere*.’

§ 135. *censoria subscriptione*: ‘with a censorlike notification of

the why and wherefore,' referring to the words quoted above from the will, *quod is ob Oppianici condemnationem pecuniam accepisset*.—Others take *subscriptione* as a causal ablative, 'in consequence of the note of the censors.' So Dr. Reid, who asks, 'Is it likely that Cicero would use *censoria subscriptio* in a metaphorical sense after employing the phrase in its ordinary sense three times in the sections immediately preceding, to say nothing of the frequent occurrence of equivalent phrases in this part of the speech?' For the causal abl., Dr. Reid adds to Draeger's instances (de leg. iii. § 15, and Phil. i. § 30) Div. in Caec. § 8; Fin. ii. § 83, and iii. § 34; Brut. § 308 (C. R. 1889, pp. 41-2).

§ 136. 'The argument about the senate's action in the case is very like the argument about the senate's action in the speech for Milo.'—J. S. R.

§ 137. *in quos . . . idem illud senatus decreverat*: 'to whom the senate had formally assigned the same duty.' Dr. Reid sends me the following note: 'If *in quos* be right, it must mean "for whose time of office the senate had passed the decree," lit. "looking to whom." Not two decrees but one was passed, to all appearance. There seems to be no point in bringing in L. Lucullus. His colleague was absent from Rome.'

id postea ferendum ad populum non arbitrarentur: 'they did not feel bound to submit at a later stage to the people,' etc. Dr. Reid thinks that *ferendum* is a necessary emendation of the commonly accepted reading *referendum*. 'There is no sound passage where *referre ad* is used of the *populus*. The explanation *denuo, rursus ferre* seems impossible. *Ferre* can only be used of a formal proposal for legislation duly laid before the people. When had that been done in the present case? Even Quintius is not alleged to have gone beyond abusive *contiones*. In respect to what Cicero says of Lucullus, it should be remembered that he and Quintius were at bitter enmity: see Sall. *Orat. Macri*.'

C. Iuni filii, pueri parvuli: 'the little son of Gaius Junius.'—Probably he was *productus in rostra* at some *contio*. The *lex* seems never to have been actually brought before the *comitia* by any tribune.—J. S. R.

§ 138. *ex oratione nescio qua*: 'out of some speech or other.' The reference is probably to the thirteenth chapter of the First Action against Verres.

§ 139. *neque cognitum commemoravi*: 'I was not stating an ascertained fact.'—*Cognitum* does not mean so much as 'upon

personal investigation,' but is a mere synonym of *certum*, as in Acad. ii. § 16, where see my note.—J. S. R.

Cum enim accusarem: 'I was conducting the prosecution,' viz. the impeachment of Verres.

omnes offendentes iudiciorum: 'a complete list of instances in which our courts of justice had given dissatisfaction.' For *offensio*, see note on § 69; and cp. *propter offendentem iudiciorum*, in *Verr.* v. § 178.

uctoritates nostras consignatas: 'a certified declaration of my own convictions.' The reference here seems to be to Cicero himself, though it would be possible to render the preceding words 'in the speeches which we barristers have delivered.' Dr. Reid thinks that the use of *adhibemur . . . nostra auctoritate* below is rather in favour of giving *nostras* a wider interpretation. In any case *hominum . . . patronorum* in what follows shows that the speaker is passing into a general reference.

causarum ac temporum sunt: 'are conditioned by particular cases and emergencies,' as above, *potius temporis mei*, etc. Mr. Fausset, however, explains 'the utterance of the case with its immediate requirements'; but this meaning does not seem to be really indispensable to the context.

quae ex re ipsa causaque ducantur: 'what can be deduced from the bare facts of the case in hand.' Others explain 'what is considered suitable to,' etc. ; for which cp. *oratio ex re et causa habita*, § 141.

§ 140. *in dissuasione rogationis*, etc. : 'in opposing the bill,' etc. The senate opposed a proposal, made by Crassus in B.C. 118, to lead a colony to Narbo, the capital of what became Gallia Narbonensis; but Crassus bore down their opposition, and led forth the colony himself. Cp. *Brutus*, § 160. Many years afterwards, in 106, he supported the bill introduced by Q. Servilius Caepio to restore to the senate the privilege of serving as jurors, which had belonged exclusively to the *equites* since the legislation of C. Gracchus. At the time of the incidents narrated in the text the *equites* again possessed a monopoly of the privilege (*illorum iudicium*); so that the quotations in praise of the senate would not be listened to in a friendly spirit.

§ 141. *pater illius accusatoris*: 'the father of "the Prosecutor," as he was called.' For the nickname, cp. *de Off.* ii. § 50; *Brut.* § 160.

§ 143. *praesidio legis*: 'the protection afforded by the letter of

the law.' In strictness, that part of the Lex Cornelia de Sicariis which referred to 'judicial circumvention' did not apply to Cluentius, as he was neither a senator nor one who had held one of the higher magistracies. See Introduction, p. xliii. *sqq.*

ut hominem confirmare oportet: 'so far as it becomes a man to speak positively.' The phrase must have the same meaning as, in a similar context, *quod timide dicam*, § 52. Cp. pro Leg. Man. § 70, *pericula facile, ut hominem praestare oportet, innocentia tecti repellemus*.—[For the limiting use cp. Tusc. 2. § 65, *prudentes, ut est captus hominum, satis*, 'in so far as human capacity admits.'—J. S. R.]

§ 144. *hominis honesti prudentisque*: 'a reputable and intelligent person.' So all editions: but for *prudentis* I would suggest *prudentis*, comparing *modestus, pudens*, § 94: *pudor, honesta vita*, § 83: *pudentissimo et in primis honesto*, § 165. So *pudor*, § 133. [*Prudentis* leads up rather better to *consilio*.—J. S. R.]

§ 145. *ut hanc causam obtinerem*: 'to get a verdict.' In support of his theory that Cluentius was *not* accused under the sixth section of the Cornelian Law (*vide* Introduction, p. xliv. *sqq.*), Dr. Bardt contends that '*causam obtinere*' is here purposely chosen as a much more general expression than '*litem obtinere*' (pro Rosc. Com. iv. 10), and that the technical word *absolvere* is avoided throughout with reference to the bribery scandal (contrast its use in § 158). But there seems to be very little in his argument; cp. Introduction, p. xlix. note. Dr. Reid says, 'Certainly in other places *causam obtinere* is used most definitely as the equivalent of *absolvi*.' The phrase occurs again, § 156.

§ 147. *Q. Naso*. His full name seems to have been *Q. Voconius Naso*. Mr. Long is of opinion that he is not identical with the *Q. Voconius* mentioned below as the *iudex quaestionis* (§ 148), but is the *praetor beneficii* himself. It seems, however, very improbable that both would have been present in court together.

mente quadam legis: 'by what I may call an intelligent force, namely the law.' *Lege* used to be read for *legis*; but the meaning is in both cases nearly the same. *Mente quadam legis* cannot mean 'the mind of law'—*i.e.* that which is to law what the mind is to the body, law being itself the directive principle—but 'a kind of mind, viz. law.' I take *legis* to be a genitive of definition: cp. Eur. Hec. 65, *σκίπων χερός*, 'the staff which is thine arm.'—On the other hand, Dr. Reid renders, 'by the intellectual force, if I may so call it, of the law.' He says, 'Just because *mens legis* was a strong and unusual expression, Cicero apologises for it by *quasi quadam*: see my

note on Acad. i. § 21. The identification of law with intellect or reason was very familiar to the Romans,' C. R. (1889), p. 42.

inter sicarios: 'cases of assassination.' So numerous were the cases that came before this *quaestio* that the praetor assigned to it had the co-operation of the three *iudices quaestionis* named in this section—Naso, Plaetorius, and Flaminius.

peculatus: 'embezzlement of public moneys.' *Peculatus* was the general term for the offence with which the praetor Orchivius had to deal, the case of Faustus Sulla e.g. (*de pecuniis residuis*, § 94) forming a special department.

§ 148. *periculi non legitimi*: 'a risk to which the law does not expose you.' The Crimen Repetundarum (pecuniarum) was originally a charge of extortion, with a claim for restitution in name of damages, preferred against a provincial governor; and it was afterwards extended to all acts of malversation. It also appears to have been made to include the taking of a bribe by a *iudex* (*pecunia ob rem iudicandam capta*); at least such a clause appears in the Lex Iulia Repetundarum, which probably followed the Lex Cornelia, and also the still earlier Lex Servilia, at least to the extent of embodying the provisions which enjoined the procedure *quo ea pecunia pervenerit* (pro Rabir. Post. ch. iv.) See the note by Dr. Reid on § 104 above: *qua lege*, etc. If Accius could plead that he had never held any office nor discharged any duty that could make him liable to the terms of the statute (cp. note on § 98), he could of course refuse to take his trial. Moreover he was a Roman knight, and the section of the Lex Repetundarum referring to judicial corruption applied only to senators (*a senatore*, § 104): cp. pro Rab. Post. ch. vi.

iubet lex ea qua lege, etc.: 'the statute in accordance with which,' etc., i.e. the Lex Cornelia de Sicariis et Veneficis, which dealt with charges of assassination and poisoning, and also with the crime of procuring a judicial conviction by unjust means. The peculiarity of the statute was that, while any one could be brought to trial under the former heads, those only who had held high state office, or who were members of the senate (i.e. all members of the senate, official and unofficial), were liable to impeachment under the latter. Accordingly Cicero contends that, if he were allowed to rest the defence on the letter of the law, Cluentius, as a Roman *eques*, could plead that it did not apply to him. Cp. Introduction, p. xlvi. *sqq.*

Qui tribunus militum, etc.: 'Who being a military tribune,' etc.

There were four first legions, five second, and five third. The twenty-four tribunes of the four first legions ranked among the *magistratus*, as being appointed, not by nomination of the consuls, but by election from the senatorial or equestrian orders.

§ 149. *Qui tamen . . . noluit*: ‘No matter: he has refused to allow his defence to rest on the letter of the statute.’ *Noluit* is here preferable to *nolit*: see Fausset’s critical note.—[The MSS. reading is awkward. Perhaps *Quis ergo? Est Clientius eques, tamen, etc.*—J. S. R.]

§ 150. *ut commutatis [eis] opus sit legibus*: ‘that we require a thorough change in our laws.’ I incline to think, with Hartman, that *eis* should be deleted.

Deinde quis unquam hoc senator, etc. ‘Secondly, is there any known instance,’ etc. In what follows, I read (after Baiter and Kayser) *recusavit ne cum . . . putaret . . . uti oportere*: for *cum*, Müller and Fausset substitute *quo*. In either case, *eo* is in construction with *durioribus*, ‘more stringent in proportion to his elevation.’ *Condiciones*=limitations or restrictions; cp. below, *putant enim minus multos sibi laqueos legum et condicionum ac iudiciorum propositos esse oportere*.

The reading of the MSS. is *accusavit ut cum*, and so Classen and Ramsay. Though harsh, this seems not indefensible; *hoc* would naturally have been expanded into *ut durioribus condicionibus uteretur*, in place of which the orator substitutes, after the intervening dependent sentence, *ut se putaret uti opertere*: cp. § 153, *non fecerunt idem quod nunc Clientius, ut aliquid culpae suscipere se putarent*. Such pleonasms (arising here from the insertion of the verb of thinking in the subjunctive instead of the thing thought) are common enough in Cicero: Roby, § 1746. There is no MS. authority for *non* before *oportere*. [*Accusare aliquid* is quite good Latin for ‘to find fault with something.’ I would keep *accusavit* and *cum*, read *aut* for *ut*, and insert the negative (which very frequently falls out): ‘What senator ever found fault with this provision, or would think—?’] *Quo* is not necessary, as the formal correspondence of *eo* and *quo* with comparative is not always carried out.—J. S. R.]

aut non petiverunt: ‘or else have not sought for it.’ They have been wanting in either ability or ambition. In order to gain an object for *petiverunt*, editors generally follow S T in omitting *in* before *summum locum*. But Dr. Reid thinks that we have here an instance of the absolute use of *petere* (‘to be a candidate’): cp. *in*

unum locum petere and the like. He would therefore retain *in*, especially as *ascendere summum locum*, where *locum* has not the primary sense, is a doubtful expression.

§ 151. *C. Gracchus tulit*: 'was carried by Gaius Gracchus.' This law, establishing a new *quaestio*, may have been passed before Gracchus effected the transfer of the *iudicia* from the senate to the equites, so that it would operate against the former in favour of the lower orders. See, however, Fausset's note. It was ratified by Sulla and embodied in his *Lex de Sicariis et Veneficis*.—Dr. Reid points out that the words *in plebem* and *populum Romanum* are brought in subtly here, where only the *equites* are really in question, in order to pave the way for §§ 155, 156, where it is alleged that the argument of Accius threatens the whole community. Cp. Introd. p. lii.

omnem illam acerbitudinem proscriptionis suae qua est usus in veteres iudices: 'all the spleen of his proscription, as he vented it on the former jurors.' Sulla had, among other measures, reversed the enactment of C. Gracchus above referred to, and had transferred to the senate the privilege of serving as jurors, of which the knights had enjoyed the almost unbroken monopoly for nearly fifty years. Cicero says that if, in re-enacting the law of Gracchus to repress judicial corruption, he could have made it retrospective, so as to render amenable to its penalties those who, like Cluentius, were now excluded from the privilege of serving as jurors, he would gladly have done so; but the charge of 'judicial circumvention' could only be made against those who actually exercised the functions of jurors under the new conditions—*i.e.* the senatorial order. As it was, Sulla had recourse to violent measures in order to wreak his vengeance on the equites, who had resisted him; and Appian tells us that 1600 of them perished by his first proscription.

§ 152. *sine cupiditate*: 'free from the spirit of partisanship.' Cp. on § 66. Mr. Fausset takes the phrase as = *integritate* above, and renders 'without greed,' but it seems as natural to contrast it with the phrase that follows, *qui sese volunt posse omnia*.

Nam ii senatores qui, etc. 'Strong in the consciousness of their own rectitude,' those senators fear nothing for themselves from the statute under discussion, and they see no reason why upright knights should fear anything either. The minority (*ei qui sese volunt posse omnia neque praeterea quicquam esse aut in homine ullo aut in ordine*) thinks to intimidate the latter if it can succeed in actually bringing them within the clutches of the law (*in huiusc legis periculum concludatur*). Boll thinks there may be a reference here to

the senatorial leaders of the popular party, of whom the most powerful was Julius Caesar (then thirty-five years of age) and M. Crassus.

qui rem iudicarint: 'those who have served as jurors,' *i.e.* even though they are not senators. The argument is technically correct, but not sound in equity. Cicero is endeavouring to excite the class-feelings of the equites, whom he proceeds in the following passage specially to address. He argues that the effect of extending the operation of the Cornelian Law from the senators to members of other classes who might have been guilty of the offence against which it was directed (as would be done if Cluentius were held liable to its provisions), would be to place the equites on the same level as the members of the senate. But as the former now (B.C. 66) shared with the latter and a third class (the *tribuni aerarii*) the privilege of serving as jurors, they should surely, in equity, have been made to accept the responsibilities attendant on that privilege. No statute making them amenable had been passed (ch. liii. *ad init.*), and Cicero protests against the thing being done, as it were, by a side wind. Accius 'urged the jurors to condemn Cluentius, and thereby establish a salutary precedent. His antagonist was not slow to take up the political gauntlet thus thrown down' (Fausset). —There is more strength in the protest as it is put by Mr. Fausset (Introduction, p. xix.): 'It seems also singularly unfair that a knight should be charged under a statute applicable to senatorial jurors for an offence committed when jurors were still all senators, *i.e.* before the law of L. Aurelius Cotta, B.C. 70; that, in fact, it should be proposed to make a new interpretation, amounting to an alteration of the law, retrospective in its action.'

§ 153. *M. Druso*. In B.C. 91 M. Livius Drusus came forward with a series of measures for reform which aimed, among other objects, at checking the corruption which had so long been the scandal of the law courts, then in the hands of the equestrian order. He proposed to transfer them from the knights to the senate, recruited by an addition of three hundred members to be taken from the ranks of the former; and further to appoint a special tribunal for the trial of such jurors as had been or should be guilty of receiving bribes. Drusus sought in fact to make the equites responsible for corruption in the past; the Sempronian law of B.C. 124 (whatever it was: see on § 151) must have required extension of some kind. The knights resisted: *intellegebant enim ea lege equestrem ordinem non teneri*, § 154. The measures of Drusus were cancelled immediately after his assassination.

cum illa cuncta quae tum erat nobilitate: 'with the whole aristocracy of the day,' which included such names as M. Aemilius Scaurus, the princeps senatus, L. Licinius Crassus, M. Antonius, Q. Mucius Scaevola, Q. Lutatius Catulus, and others. The most distinguished of their opponents was the consul L. Marcius Philippus.

ceterique eiusdem ordinis: 'and the rest of the equestrian order.' *Eiusdem* is the reading of Klotz, Müller, and Madvig, for the MSS. *eiuscemodi* or *huiuscemodi*.

cum haec recusarent: 'protesting,' etc. Dr. Reid suspects the text, and *recusarent* is awkward after *recusando* immediately above. He suggests *refutarent*: *haec* would then = 'arguments such as Accius has used.'

§ 154. *quibus in rebus . . . voluerunt*: 'all which,' they say, 'were to be held up, according to the design and intention of our ancestors,' etc. *Voluerunt* is to be noted, as apparently a transition to *oratio recta*, rather than an added remark of the speaker's. *Voluissent* would have been more regular, or even *voluerint*. Cp. Roby, § 1797; and consult Dr. Reid's note on *de Amic.* § 45.

§ 155. *a legibus non recedamus*: 'let us stand by them.' In jussive sentences *non* is used for *ne* when (as here) the negative is to be taken as closely linked to the word which it negatives: cp. Liv. xxxv. 48, 9, *bello se non interponant*: 'let them observe non-intervention.' So pro Cael. § 42, *non omnia voluptatibus denegentur*: Liv. vi. 41, 10, *non leges auspicio ferantur, non magistratus creentur*: id. ix. 34, 15, *non die, non hora citius quam necesse est magistratu abieris*. In short, *non* may be used when only a part of a jussive sentence is negated, whether that part be a word or a phrase: Tac. Ann. i. 11, *non ad unum [sed ad plures] omnia deferrent*; Dial. 13, *Non me [sed alios] fremitus salutantium excitet*. Cp. Aen. xii. 78, *Non Teucros agat in Rutulos*, where Professor Nettleship says that *non* is used, for *ne*, 'if a particular part of the sentence is to be emphasised'; Hor. Sat. ii. 5, 91. The whole question is discussed by J. E. Nixon, in the *Journal of Philology*, vii. p. 56. See also a paper on 'The Latin Prohibitive,' in *Am. Journ. Phil.* xv. p. 318.

§ 156. *omnes cives legibus teneri omnibus*: 'that every law is binding on every citizen.' This appears to be a slight exaggeration of the real argument of his opponent. Accius had contended that the *same laws* should be binding on all (who came within the sphere of their operation): § 150, *iniquum tibi videtur, Acci, esse non isdem legibus omnes teneri*. But this hardly amounts to saying that

every law is binding on every citizen. In the case before us, knights as well as senators, Accius urged, ought to be held amenable; for both orders now shared the administration of the jury courts. His case was that a true interpretation of the *lex Cornelia* was enough to bring Cluentius under its provisions: see on § 152. Cp. § 145, *indignum esse facinus si senator iudicio quemquam circumvenerit legibus eum teneri: si eques Romanus hoc idem fecerit non teneri.*

§ 157. *falsumve testimonium dixerit*: 'or shall have given false evidence.' Cicero speaks of this provision of the *Lex Cornelia* as if it were restricted, like the sixth chapter, to senators and officials. 'This restriction is not found in the Digest (Marc. Dig. xlvi. 8, 1). Probably Cicero is speaking correctly for his own period, and the jurists of the Digest speak of the *lex Cornelia* as it was modified in imperial times. This hypothesis is rendered likely by the context in the Digest, which speaks of *deportatio* (an imperial punishment) as the penalty threatened. The original penalty under the law was *aquaee et ignis interdictio*.'—Fausset. [It must be remembered that while in Cicero's time perjury was not directly punishable, excepting in a special case like this, in imperial times it became directly punishable.—J. S. R.]

§ 159. *sine ullo metu*: 'free from fear.'—*Metus*, religious or moral apprehension.—H. N.

§ 160. *iudicem quod ei videatur statuere et non devinctum legibus esse oportere*: 'that a juror has to decide as he thinks best, and ought not to be fettered by statutes.' Mr. Fausset rightly calls attention (Introduction, p. xx.) to the importance of these words as showing that Accius 'had proposed some subjective interpretation of the letter of the law.' Cp. on § 152. [Accius, most likely, merely harped on the old contrast between the letter and the spirit, as Cicero himself does in the speech *pro Caecina*.—J. S. R.]

§ 161. *in callibus*: 'on the upland pastures.' See Fausset's note. Dr. Reid points out that the reading *in callibus* is more suitable to a mountainous region, given over to *pastures*, than *in collibus* ('on the hillside.') As a rule, *collis* applies only to a slight elevation.

§ 162. *neque ei cautum satis videretur*: 'and as he thought that Florus could not show a sufficient title,' lit. 'that it was not sufficiently secured to him.' Florus could not prove, from the wording of the will, that the claim for the larger amount was a valid claim.

a sectoribus: 'from the speculators.' The *sectores* made wholesale purchases when property confiscated to the state was put up

to auction, with the view of retailing what they had bought at a profit. They would do a good deal of business in the Social War.

§ 163. *calumniam non effugiet*: ‘shall not escape the penalty that attaches to fraudulent accusation.’—[An unusual phrase: cp. the different sense in N. D. ii. § 20. *Calumniam=calumniae poenam*. The words *illo iudicio privato* do not fit in well. *Hic* is perhaps an error for *ex*=‘after,’ ‘following on.’—J. S. R.]

Si invitaverit, etc. ‘If he gives us an opening,’ etc. There is a *double entendre* throughout. ‘If this hospitable person gives us an invitation (*i.e.* really brings his action and asks us to “come on”), we shall give so good an account of him (*sic hominem accipiemus*, *i.e.* in defending the action), that he will regret having left his ordinary line of business.’ *Accipiemus* does not necessarily point to a ‘turning of the tables’ between host and guest, though I formerly rendered, ‘If in pursuance of his calling he gives us an invitation, *we* shall entertain *him* in such a way that he will regret ever having left the high road.’

de via decessisse may contain a reference to *de via Latina* above: ‘having left the Latin Way—to come to Rome.’ For a similar expression, cp. Cael. § 38, *se nulla cupiditate inductum de via decessisse*; Plin. Ep. i. 2. § 4, *paulum itinere decadere*.

§ 164. *ad vestrum iudicium minime pertinerent*: ‘though your court has really no concern with it.’ The court was only concerned with the direct charges of poisoning; but so anxious was Cluentius to maintain his reputation, that Cicero was instructed to reply to these trivial side-issues. [*Ad vestr. iud. min. pertinerent*, at first sight, seems to contradict *quae quia vestrae quaestionis erant*, etc., in § 160. But the *per pauca* there seem to be the charges of poisoning, ‘and it is because these charges of poisoning do fall within your cognisance that they thought it necessary to prejudice my client by inventing some damaging facts, so as not to prop up their case by mere popular odium.’—J. S. R.]

§ 165. *Intestatum dico esse mortuum*: ‘I assert that he left no will.’ By this reference to the man’s will, Cicero evidently wishes to prove that his client can have had no motive for attempting his life. But as the nephew of Cluentius came in for the inheritance, it might perhaps have been as well to have omitted this argument.

§ 167. *cum ille verbum omnino . . . nullum facere potuerit*: lit. ‘when—even though Oppianicus had not so much as opened his mouth at this trial—my client,’ etc. This passage has been, in the main, correctly explained by Mr. P. Sandford in the Classical

Review, vol. iv. (1890) pp. 271-2. The argument obviously is, as again at § 169, that there was no motive for the crime. 'Were Oppianicus the younger the only one to accuse Cluentius there would have been a motive for poisoning him, and so silencing him for ever. But Sassia would have secured others to prosecute, and poisoning him would have been incurring a fresh risk without any advantage. The difficulty [see Fausset's note] was caused by the ambiguity of the negative. Had Cicero given *tacere* instead of *verbum facere nullum* no one would have questioned my rendering; § 185 affords two examples, if any were needed, where the expressions are convertible.' But I do not agree with Mr. Sandford in his interpretation of *eius periculi*, 'the danger of the former prosecution' (for poisoning Oppianicus the elder). *Eius* clearly goes with *causa*. Nor do I agree with Mr. Fausset in desiderating *sua* for *eius*; with a verb like *detraheret* we could not have had *eius*, but it goes quite well with *decederet*. [*Cum . . . potuerit* must mean I think, 'whereas he has found it impossible to utter a word during the present case,' i.e. the dumbness of the man on the present occasion shows how little he ever deserved to be feared as a possible prosecutor.—J. S. R.]

An ut de causa eius, etc. : 'Was it that instead of shedding some of its adverse features,' etc. [What is the syntax of *an ut . . . accederet*? . There is not here an '*unwillige Frage*'; it would not be introduced by *an*, nor does the sense suit. Either *fecit* or *id egit*, or something of the kind, has fallen out between *an* and *ut*, or some such phrase must be loosely supplied from the context.—J. S. R.]

§ 168. *ut aetas illa fert*: 'as young men like him will do.' Similarly Brutus, § 160, *senior, ut ita dicam, quam illa aetas ferebat oratio*: de Or. ii. § 13, *ut ipsorum usus ferebat*.

ex illo loco: 'on the other side.' Literally, 'from yonder benches,' *ex subselliis accusatorum*. Contrast § 54, *hoc ipso in loco*.

§ 170. *electum e civitate*: 'banished the country.' Oppianicus had been banished from Rome, § 175. *Civitas* stands for the body of *cives*.

§ 171. *Nisi forte ineptis fabulis ducimur*: 'It may be, indeed, that carried away by idle tales,' etc. There is abundant evidence in the writings of Cicero that he did not disbelieve in the immortality of the soul and a future state. In the de Senectute, and in the Tusculan Disputations (Book I.), he states the arguments of Plato on behalf of the belief; and the Somnium Scipionis (in de Repub. vi.) concludes

with an allusion to the rewards to be enjoyed in the future state by those who have been faithful servants of their country in this life. Compare, too, his eulogy of Servius Sulpicius in the Ninth Philippic, especially the beginning of ch. vi. ; also the concluding sections of the fourteenth.

Alongside of the passage in the text may be set, in particular, the language of Phil. xiv. 12, 32, *illi igitur impii quos cecidistis etiam ad inferos poenas parricidii luent*, etc. A comparison of the two places must compel the admission that, at least in his rhetorical as distinct from his philosophical writings, Cicero adopts or rejects the current popular belief just as may suit his purpose at the time. The language of the text, which expresses the Epicurean view embodied in the Third Book of Lucretius (see especially iii. 830), resembles that which Sallust puts into the mouth of Julius Caesar, Cat. li. § 20, *de poena possumus eisdem dicere, id quod res habet, in luctu atque miseriis mortem aerumnarum requiem non cruciatum esse, eam cuncta mortalium mala dissolvere, ultra neque curae neque gaudio locum esse*, with which should be compared what Cicero says, in reference to the same debate, in Cat. iv. § 8, where he refers to the traditional view of punishments in the lower world as fabulous. For a limited view of immortality, see pro Rab. Perd., § 29. [Cicero is in this section not denying the future life, but only the fables which popular superstition had woven round it. Cp. especially the striking passage (not quoted by Fausset) ad Att. x. 8. 8, *Quamquam tempus est nos de illa perpetua iam, non de hac exigua vita cogitare.*—J. S. R.]

§ 172. *atque adeo*: 'in fact,' etc. For this use of *adeo*, 'nay more,' cp. Verr. ii. 3, *adducitur atque adeo attrahitur*; pro Rosc. § 29, *Hoc consilio atque adeo hac amentia impulsi*. Cp. the use of *adeo* in Tacitus, e.g. Hist. i. 9; Dial. 3. 15.

Habiti exemplo: 'the example of Habitus.' He first impeached Scamander and C. Fabricius; and their conviction, according to Cicero, involved the guilt and conviction of Oppianicus.

§ 173. *Iam vero illud quam non probabile*: 'Again, how incredible it is,' etc. Hartman thinks the text corrupt, and would read . . . 'faciliusne latere potuit abditum aliqua in parte panis, quam si totum colliquefactum in potionе esset, celerius potuit comedunt quam epotum in venas atque in omnes partes corporis permanare, facilis fallere in pane, si esset *admixtum*, e. q. s.' His note runs as follows:—'In pane venenum aut abditur in aliqua parte aut *admiscetur*, in potionе vero totum *colliquefactum con-*

funditur. Venenum autem in pane abditum, si non deprehenditur, latet; si farinae fuit admixtum fallit;' *Mnemosyne*, xxii. (1894) p. 429. On this Dr. Reid observes: 'Would not any reader naturally supply *dare* to the clause *faciliusne . . . poculo* from the preceding sentence? This suggests that an infinitive like *dissipare* has been lost at the end of the second clause, after *panis*. *Animadversum* must surely be wrong. No exegesis can get over the contradiction involved in *fallere, si esset animadversum*. I would suggest *si esset maxime dispersum*, "however much it might be scattered about in the bread." Misunderstood contractions would easily lead from this to the MSS. reading. For the separation of the two words *si* and *maxime* with the sense of "however much," cp. e.g. in Cat. i. § 29. My reading fits in well with *CUM ita confusum esset*; no possible admixture in the bread could be so complete as the mingling of the poison with the liquid.'

§ 175. *Falernum*: 'the Falernian territory.' The Ager Falernus was a district in the north of Campania, lying between the Marsic hills on the borders of Latium and the river Vulturnus. It was here that the choicest wines of ancient Italy were grown (Horace, Odes ii. 3, 4; iii. 1, 41).

§ 176. *auctoritate advocatorum et vi tormentorum adducti*: 'it was the personal standing of the spectators—and the intensity of the torture—that led them,' etc. For *auctoritas*, cp. § 57. Most editors reject *et vi tormentorum*, though the words are found in all MSS. It is surely possible to believe that, without intending any reflection on the witnesses (which would be quite inconsistent with what he says in the context), Cicero is here stating, more or less ironically, what was *not* the real reason of the obstinacy of the slaves under torture, in place of what was, viz. their consciousness of innocence.

That examination by torture often had an opposite effect to what was intended is evident from such passages as Tac. *Hist.* i. 3, *contumax etiam adversus tormenta servorum fides*; Ann. iv. 29, *etiam si tormenta pervicacia servorum contra evenissent*.

The following note on this difficult passage is contributed by Dr. Reid: 'If irony had been intended, *credo* rather than *ut arbitror* would have been written. Contrasting this sentence with *nulla . . . praetermittitur* down below, I suspect that in the earlier passage he meant to intimate that the *advocati* interfered to prevent the torture from going too far (cp. *auctoritas* in § 191), while later on they gave way more to the increased violence of Sassia's humour. This sense would be given by *auct. adv. vi torm. mitigata*. Cicero often jux-

taposes ablatives in different constructions, and in such passages copyists often thought a connecting link to be needed, and inserted a conjunction. The *et* once inserted, the syntax would be obscured, and a nom. partic. in agreement with *servi* would seem to be required. The *m* of *mittigata* falling off after *tormentorum*, the remainder would easily be doctored into *adducti*.'

§ 178. *Velle atque optare*: 'ready and eager.' *Optare* is not 'to set one's heart on a thing' (Fausset), but to desire something which one can only obtain by great good fortune.—J. S. Reid.

§ 179. (150,000) *sesterces*.—The figures have dropped out of the MSS.

§ 180. *aduncam ex omni parte dentatam et tortuosam . . . serrulam*: 'a sort of circular saw, with teeth all round it, and crooked.' This saw has been the subject of some discussion; see Prof. Davies, *Hermathena*, ii. p. 401; Fausset's note *ad loc.* (with diagram); and *Classical Review* (1889), p. 374 (S. G. Owen), and p. 469 (W. Y. Fausset). Mr. Owen's diagram may here be reproduced.



He says, in explanation, 'I believe that the saw was a round saw, shaped like a tea-cup inverted, which worked on the bottom of the chest by means of a handle moving on the principle of a brace-and-bit.'

coactoribus: 'the collectors.' These men were employed as agents to collect the money due by those who had made purchases at sales by auction. It is interesting to remember that Horace's father was employed in this capacity (*Sat.* i. 6, 86).

§ 181. *quid est quod minus veri simile proferre potuistis*: 'You could not have told a more unlikely story.' For *potuistis*, Madvig proposed *possitis*, on the ground that both tense and mood were wrong on the MSS. reading. But Dr. Reid forcibly remarks: 'As to the mood, we cannot get rid of all the exx. which Ciceronian MSS. present of indic. in relative consecutive clauses; while the tense seems to yield a satisfactory meaning.'

§ 182. *Agitata denuo quaestio . . . habebatur*: 'the inquiry was reopened.' *Agitata* literally means 'being set on foot.'

§ 183. *ab hoc*: 'by Accius.' This is the reading of the best

MSS. ; many editions give *adhuc*. From the sentence at the end of the section (*quod tum Sassia dictitavit*), it would appear that Sassia had made this statement, though Accius had not availed himself of it for the defence.

§ 183. *tum Stratonem . . . dixisse* : 'Strato made a statement.' Much unnecessary difficulty has been made about this infinitive. Normally the sentence would have stood *An, cum de furto quaere-
retur, tum Strato dixit de veneno?* But the introduction of the parenthesis *id quod vobis dicendum est* gives the motive for the change.

§ 188. *alteris Oppianici nuptiis* : 'her second marriage with Oppianicus,' i.e. the second of two. It was really her third marriage, but he is leaving her union with the father of Cluentius out of account.

§ 189. *Illud primum queror* : 'My first charge,' etc. In this complex sentence *illud primum queror* serves to introduce the charge of complicity against Sassia contained in the words *non est . . . celata*, which again resume the clause beginning *quod iam tum recens*. Mr. Nettleship suggests a full stop at *veneni*, which would bring out the construction more clearly. The reference in *quod . . . videtur* cannot be to the guilt of Fabricius, which is said to have been self-evident (§ 57), and which we are not told that Cluentius had any difficulty in crediting (*huic incredibile*) ; and *recens* stands for *recenti re*.

§ 190. *filii* : 'the son of her bosom.' For the position of *mater* cp. Verg. Ecl. v. 23 ; Aen. viii. 370. So below, § 192.

ut illum confirmaret Oppianicum accusatorem filio suo : 'by way of nerving Oppianicus there for the prosecution of her son.'—'The words *accusatorem filio suo* occur four times hereabouts. In § 191 *accusatorem filio suo compararet* is quite right and usual ; but in § 192 *acc. f. s. . . misisset* is strange, and the other two instances are little less so. Copyists did not understand genitives like *filii* and often altered them ; *filii sui* may be right in these three passages.'—J. S. R.

§ 192. *Aquinum, Fabrateria*. These towns were not far distant from Arpinum, the place of Cicero's birth. All three were in Latium.

mulierem quandam Larinatem illam . . . proficisci : 'The idea of a lady of Larinum actually setting out.' The reading is Müller's. All MSS. give *Larino atque illam* ; Hartman proposes to delete *illam* and read *Larino atque usque a mari supero*. Dr. Reid suggests *Larinatem illa via*.—For the infinitive (indicating a scene

presented, in indignation and scorn, to the imagination of the orator's hearers) cp. in Verr. ii. 5. § 100, *O spectaculum miserum! . . . in portu Syracusano de classe populi Romani triumphum agere piratam!* Roby, § 1358.

§ 195. *quasi aliquos deos*: 'to play the part of another Providence.' The reading is due to Halm. Most MSS. give *alios deos*, but from *quos alios deos* (T) Classen conjectured *quasi alios deos*, while Ramsay follows Lambinus in reading *quosdam alios deos*. The motive of *quosdam* was obviously to soften down the figure, *quidam* being often used in construction with nouns with the force of *quasi* or *tanquam* (e.g. *ruina quaedam atque tempestas*, § 96). [Possibly *alteros deos*, as Cicero calls Verres 'alter Orcus' and 'Cyclops alter,' Livy Hamilcar 'alter Mars,' etc.—J. S. R.]

For the sentiment cp. pro Rab. Perd. § 5, *Deinde vos, Quirites, quorum potestas proxime ad deorum immortalium numen accedit, oro atque obsecro*, etc. ; pro Mur. § 2, *cum omnis deorum immortalium potestas aut translata sit ad vos aut certe communicata vobiscum*.

non domesticis copiis esse tutum: 'is under the protection not of its ordinary defenders, but—' This is Madvig's reading. The MSS. give *in domesticis copiis esse totum*, which might be rendered, 'is wholly in the keeping of the forces of the hearth and home'; but it is difficult to see the point of *communi Italiae pace*. For *idque* Hartman would read *atque*.

For *domesticae copiae*, 'forces furnished by Larinum itself,' cp. de Or. ii. § 38, *nisi domesticis se instruxerit copiis*.

§ 196. *Quae dum laudatio recitatur*: 'and while this eulogy is being read.' The *laudatio*, or witness to his character by the fellow-townsmen of Cluentius, was here read. For these *laudationes*, cp. note on § 56.

§ 197. Ferentum (or Forentum, as in Hor. Od. iii. 4, 16) was a town in Apulia; its name survives in the village Forenza, which lies on a hill in the vicinity. A more common reading is Frentani, and is perhaps more appropriate as being the name of the Samnite tribe in whose territory Larinum lay. They inhabited a strip of country along the shore of the Adriatic, south of the Marrucini, who are named next.

For the Teanum in Apulia, cp. § 27. Luceria lay due south of it, while Bovianum was in the heart of the Samnite territory.

§ 198. *res pecuarias*: 'grazing stock.' The MSS. give *res pecuniarias*; but Samnium was a great district for pasturage.

honesti homines et summo splendore praediti: 'men of light and

leading'; literally, 'honourable gentlemen of the most unsullied reputation.' So I have rendered *splendor*, § 49, 'shining merit.' Cp. Mr. Fausset's Glossary.

§ 199. *vetere instituto*: 'according to ancient practice.' This is the rendering which I now adopt. See Fausset's note, and add Brut. § 207, *neque hoc quod nunc fit ut causae singulae defenderentur a pluribus; quo nihil est vitiosius.* De Or. ii. § 313.

iura hominum convertit omnia: 'she has dragged in the dust all the binding ordinances of society.' This expression includes the perversion of relationships stigmatised below, but has probably a more extended meaning.

§ 200. *in falsa invidia periculisque*: 'groundless prejudice and peril.' There is no attempt here, as Bardt thinks, to repeat the distinction drawn between the 'invidia' and the 'crimina' in the exordium. The phrase is simply equivalent to *in falsae invidiae periculis versatum*: cp. § 8, *de communibus invidiae periculis*.

aliorum facto et cupiditate: 'the villainy and avarice of others.' For *facto* Ernesti conjectured *fraude*. [Factum often acquires an evil sense from the context: here = *facinore*. — J. S. R.]

§ 201. *mors sepulchro patris privata esse*: 'only that in death he might be robbed of the sepulchre of his fathers.' Cp. the fragment of pro Rab. Perd. xiii. 37, *neque tam ut domo sua fruatur quam ne patrio sepulchro privetur laborat*, where Mr. Heitland refers also to pro Sulla, § 89.

APPENDIX

SOME REMARKS ON THE TEXT

CLASSEN has, I think, successfully demonstrated that where the Turin palimpsest fails, his MSS. A and B (S and T in Orelli's edition) must on the whole (though not absolutely without exception) be made the basis of the text.

Some valuable readings are preserved in quotations made from the speech in antiquity.

- § 5. Quint. ix. 3. 85, *ponatur*, rightly as against A and B, *puniatur*.
- § 11. Quint. iv. 1. 79, *repetam*, perhaps rightly, with vulgate, as against *petam* of A and B.
- § 15. Quint. iv. 2. 105, *timuisse*, rightly as against A, B, and many other MSS.
- § 32. Quint. viii. 4. 11, *per alieni corporis vim atque cruciatum*, as against *mortem* of MSS. This may possibly be right, *vim atque cruciatum*=violent torture. Comp. Verr. v. 138, *mortem cruciatumque*, which perhaps=a death of torture.
- § 98. I have discussed this passage in the *Journal of Philology*, vol. viii. pp. 245-246; but do not feel sure that I am right.
- § 143. Quint. v. 13. 47, *nimirum tibi istud lex ipsa renuntiavit*.
Here A and B have *sed et nimirum*. I suspect Quint. is right, and that *sed et* is a corrupt repetition of the preceding *est*.
- § 166. Quint. ix. 2. 48, *haec pluribus dicerem*. MSS. *pluribus verbis*. I suspect that Quint. is right.
- § 167. Quint. ix. 3. 37, *quae porro interceptio poculi*. More idiomatic than the MSS. reading *quae deinde i. p.*

On the other hand, in 173 the MSS. reading is to be preferred to that of Priscian, x. p. 520 (Keil), *celerius potius comedum . . . permanaret*: and so it is in 70 to that of Rufinianus, p. 44, Halm, *dem iudicibus, mihi igitur nihil quaeretur?*

*Orthography of the Proper Names as given in the best MSS.
supported or not by inscriptions or otherwise.*

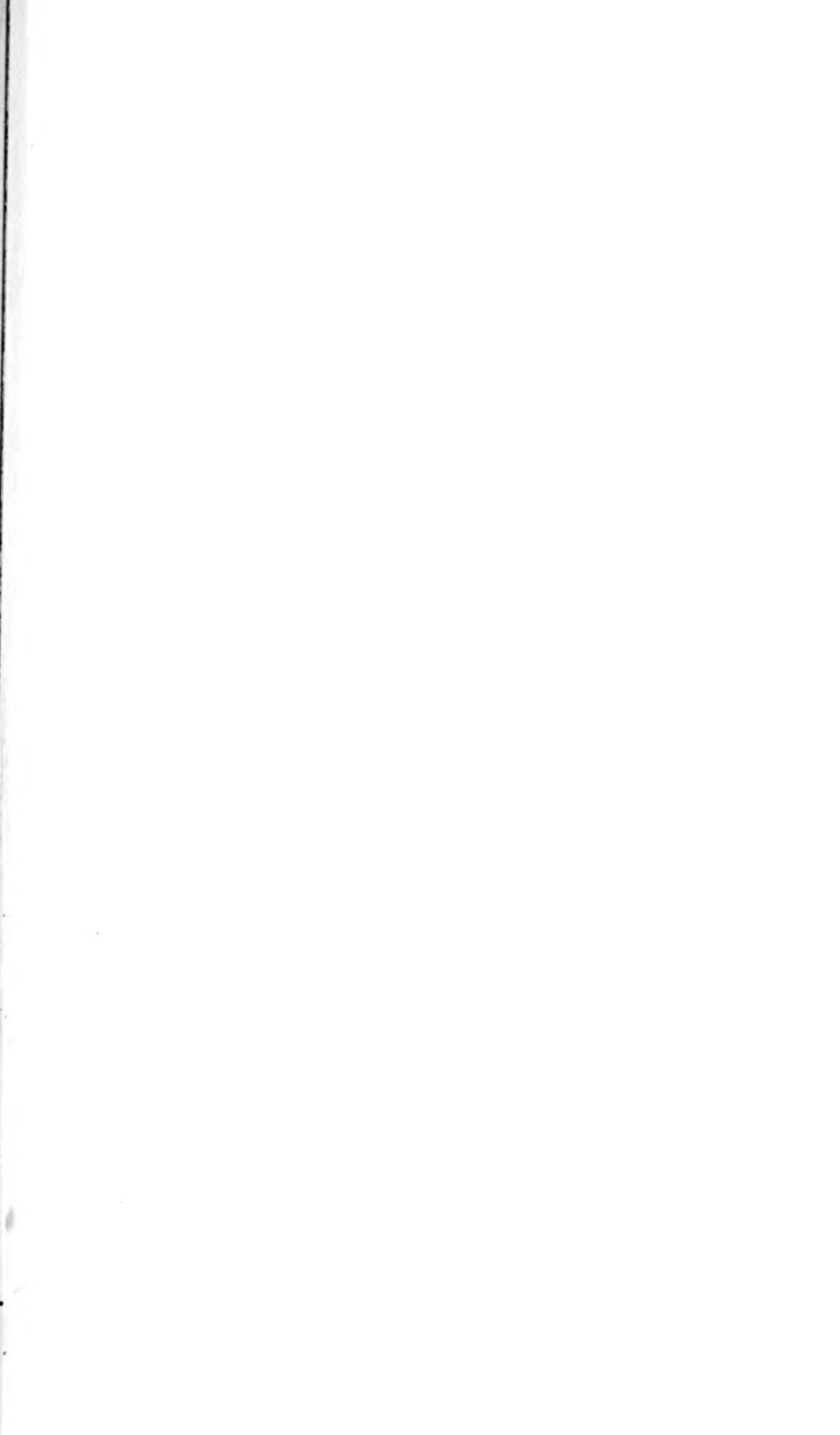
NOMINA

Ambivius, C. I. L. (Corpus Inscr. Latinarum), 6. 200 (A.D. 70), 2284.
Ancharius, C. I. L. 2. 531, 3 often, 6. 1056: *Ancarius*, 2. 1690.
Asellius, C. I. L. 2. 535, 6. 1056, *al.*
Asuvius, C. I. L. 6. 200 (A.D. 70): *Asuia*, C. I. L. 1. 1204.
Cannutius, C. I. L. 5 often: 3 *ter*.
Caulius, C. I. L. 3, D. xxi. foll., 7. 1193.
Ceius, C. I. L. 3. 4107, 4 often.
Considius, C. I. L. 3. 2296, 5. 3105, 1. 480.
Decidius, C. I. L. 5. 1187, 1188.
Matrinius, C. I. L. 3. 1301.
Orcevius, C. I. L. 1. 134, 135, 1541: *Orcivius*, C. I. L. 5. 8152:
Orcivia, C. I. L. 5 *ter*: *Orchivius*, C. I. L. 3. 2082.
Poplicius, C. I. L. 1. 635, 1465: *Poplicius*, C. I. L. 1. 454:
Publicius, C. I. L. 1. 943.
Rupilius, C. I. L. 1. 1421.
Safinius, C. I. L. 1. 1471.
Sasius, C. I. L. 5. 4943, 4967. Apparently the lady's name was
Sasia, not *Sassia*. Arusianus, p. 494 (Keil), quotes "Si Asia
(=Sasia) huius mater Habiti." In Quint. iv. 2. 105, A (a
good MS.) has *Osiae*=*Sasiae*.
Tudicius, C. I. L. 5. 2515, 2712.

COGNOMINA

Cappadox, C. I. L. 2. 224.
Gallicanus, C. I. L. 2. 4115, 1709; 3. 42, 3084.
Geta, C. I. L. 1. 486 (B.C. 54); 3. 905, 6179, *al.*
Gutta, C. I. L. 4. 1093 (Pompeii). An Oscan name. See Appian,
i. 90 (Mommsen, *Unteritalische Dial.*, p. 253).
Habitus, C. I. L. 4. 1457, 1762; 7. 1336 (525): *Abitus*, C. I. L.
7. 1336 (501-2).
The word apparently=fat.
Senator, C. I. L. 3. 3591, 6150 (35); 5. 4724. Probably a mere
cognomen in the pro Cluentio.

H. NETTLESHIP.







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Cicero, Marcus Tullius
The speech in defence of
Cluentius

